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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1839

Introduced by Assembly Members Gatto and Bocanegra

(Principal coauthors: Assembly Members Allen, Bloom, Bonta, Brown, Ian Calderon, Campos, Dababneh, Garcia, Gorell, Hall, Muratsuchi, V. Manuel Pérez, Rendon, and Wilk)

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(Coauthors: Senators Berryhill, Correa, Gaines, Galgiani, Huff, Knight, Liu, Morrell, Pavley, Torres, Walters, and Wyland)

February 18, 2014

An act to amend ~~Section~~ *Sections 17053.85, 23036, and 23685* of, to add Sections 38.9, 17053.95, and 23695 to, and to repeal and amend Section 6902.5 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1839, as amended, Gatto. Income taxes: qualified motion pictures.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to an applicable percentage of either 20% or 25%, respectively, of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California, or, where the qualified motion picture is a television series that relocated to California or is an independent film, as provided. Existing law imposes specified duties on the California Film Commission related to the administration of the credits, including a requirement to allocate the tax credits until July 1, 2017, and limits the aggregate amount of credits that may be allocated to qualified motion pictures in any fiscal year to \$100,000,000 through the 2016–17 fiscal year. Existing law, for taxable years beginning on or after January 1, 2011, in lieu of the credits authorized under the Personal Income Tax Law and the Corporation Tax Law for qualified motion pictures described above, also allows a credit against qualified state sales and use taxes, as provided.

Existing law provides for a tentative minimum tax and further provides that, except for specified credits, no other credit shall reduce the tax imposed below the tentative minimum tax.

For those existing credits, this bill would allow an additional \$100,000,000 of credits to be allocated over the 2015–16 and 2016–17 fiscal years.

This bill would *also* establish similar credits under the Personal Income Tax Law and the Corporation Tax Law for taxable years beginning on or after January 1, 2016, to be allocated by the California Film Commission on or after January 1, 2015, and before July 1, 2019. This bill would, as compared to the existing tax credits, extend the scope of the credits for a qualified motion picture to the applicable percentage of qualified expenditures up to \$100,000,000, would extend the credit to qualified expenditures for television pilot episodes, qualified expenditures for qualified visual effects, and qualified expenditures relating to music scoring and music track recording by musicians, would provide limited credit allocation priority for specified television series, and would determine an applicable percentage of 25% or 20% for qualified expenditures for television series relocating to California based

on the number of years the series has received the credit since relocation to California and where in California photography occurs. This bill would limit the aggregate amount of these new credits to be allocated in each fiscal year to \$400 million, and would, subject to a computation and ranking of applicants based on the jobs ratio, as defined, require the California Film Commission to allocate credit amounts subject to specified categories of qualified motion pictures. This bill would, for taxable years beginning on or after January 1, 2016, in lieu of the credits authorized under the Personal Income Tax Law and the Corporation Tax Law for qualified motion pictures described above, allow a credit against qualified state sales and use taxes, as provided. This bill would also require the Legislative Analyst's Office to prepare reports related to the effectiveness and administration of the qualified motion picture credit under the Sales and Use Tax Law, the Personal Income Tax Law, and the Corporation Tax Law.

This bill would, for taxable years, beginning on or after January 1, 2016, additionally allow the credit under the Corporation Tax Law for qualified expenditures for the production of qualified motion pictures to reduce the tentative minimum tax.

This bill would also make findings and declarations related to the entertainment industry, and would urge the United States Congress and the International Trade Commission to investigate and impose sanctions on specified motion picture productions and elements of production to combat unfair and illegal competition.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The bill would state that its provisions are severable.

This bill would incorporate additional changes in Section 23036 of the Revenue and Taxation Code, proposed by AB 2754, to be operative only if AB 2754 and this bill are both chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) There has been no greater ambassador for the State of
4 California than its artistic output, inspiring generations to dream
5 about the bounty of this golden state, driving a modern gold rush
6 of those who came here to be a part of that California dream, as
7 they had done during the Gold Rush and the Dust Bowl migrations
8 during previous generations.

9 (b) California's artistic output is manifested in the evolution of
10 Hollywood, a locale internationally celebrated as the home of the
11 entertainment industry, having established itself as a filmmaking
12 locale by the early 1900s.

13 (c) Hollywood's cultural output is a primary reason why
14 California emerged as a thought leader in the United States, and
15 around the world.

16 (d) The benefits of a healthy entertainment industry manifest
17 themselves in healthy employment markets, healthy tourism,
18 healthy local economies, and healthy family units.

19 (e) However, since 1997, other states and nations have sought
20 to lure the economic activity, tax revenue, workforce, and renown
21 that are concomitant to the industry.

22 (f) California's entertainment workforce has been steadily
23 eroding for more than a decade, forcing thousands of Californians
24 to temporarily or permanently relocate, leaving their families and
25 communities behind.

26 (g) The exodus of the film industry has hurt related businesses
27 that provide the motion picture industry with specialized services,
28 equipment, and facilities.

29 (h) The visual effects industry is a highly qualified and highly
30 skilled sector of the entertainment industry that is becoming
31 increasingly significant as films become more technical in nature.

32 (i) In search of subsidy programs that specifically target special
33 effects, visual effects, and virtual photography, many
34 California-based companies have opened international offices to
35 compete for tax incentives offered in those jurisdictions.

36 (j) California, and the United States as a whole, is facing
37 growing competition from international governments that have
38 implemented aggressive tax rebates and initiatives that have lured

1 tens of thousands of jobs associated with film production,
2 postproduction, visual effects, and music scoring abroad.

3 (k) The federal International Trade Commission exercises broad
4 authority to investigate the effects of subsidized imports on
5 domestic industries, to conduct global safeguard investigations,
6 and to protect domestic industries from unfair acts in importation.

7 (l) It is the intent of the Legislature to urge the United States
8 Congress and the International Trade Commission to investigate
9 aggressively and impose sanctions, including tariffs, on productions
10 and elements of production, including visual effects, virtual
11 photography, and music scoring, that are digitally distributed and
12 electronically transmitted, in its definition of “articles” protected
13 by the Tariff Act, to combat unfair and illegal competition from
14 international parties.

15 (m) A central focus of this Legislature has been developing
16 policies to help California climb out of the great recession and put
17 families back to work. In order to halt the steady outward march
18 of jobs and creativity, California must have a robust, smart, and
19 efficient tax incentive program that guarantees job growth and
20 economic expansion, coupled with strong accountability and
21 transparency measures. Towards this end, California’s tax credits
22 for film and television must be reformed to ensure that California’s
23 taxpayers receive the maximum possible economic return on their
24 investment. It is the intent of this legislation to replace the
25 program’s current arbitrary lottery system with a competitive and
26 accountable system that ranks tax credit applications according to
27 net new jobs created and overall positive and sustained economic
28 impacts for the entire state.

29 SEC. 2. Section 38.9 is added to the Revenue and Taxation
30 Code, to read:

31 38.9. (a) On or before July 1, 2019, the Legislative Analyst’s
32 Office shall provide to the Assembly Committee on Revenue and
33 Taxation, the Senate Committee on Governance and Finance, and
34 the public a report evaluating the economic effects and
35 administration of the tax credits allowed pursuant to Sections
36 6902.5, as amended by the act adding this section, 17053.95, and
37 23695. In researching the reports, the Legislative Analyst’s Office
38 may do all of the following:

1 (1) Request and receive all information provided to the
2 California Film Commission pursuant to subdivision (g) of Sections
3 17053.95 and 23695.

4 (2) Request and receive all information provided to the Franchise
5 Tax Board relating to the sale or assignment of credits pursuant
6 to subdivision (c) of Sections 17053.95 and 23695.

7 (3) Request and receive all information provided to the board
8 pursuant to subdivisions (c) and (g) of Section 6902.5, as amended
9 by the act adding this section.

10 (b) The California Film Commission, the board, the Franchise
11 Tax Board, the Employment Development Department, and all
12 other relevant state agencies shall provide additional information,
13 as specified by the Legislative Analyst's Office, as needed to
14 research the reports required by this section.

15 (c) (1) The information received by the Legislative Analyst's
16 Office pursuant to this section shall be considered confidential
17 taxpayer information subject to Sections 7056, 7056.5, and 19542
18 of this code and Section 1094 of the Unemployment Insurance
19 Code, and shall be subject to the appropriate confidentiality
20 requirements of the participating state agency.

21 (2) The Legislative Analyst's Office may publish statistics in
22 conjunction with the reports required by this section that are
23 derived from information provided to the Legislative Analyst's
24 Office pursuant to this section, if the published statistics are
25 classified to prevent the identification of particular taxpayers,
26 reports, and tax returns and the publication of the percentage of
27 dividends paid by a corporation that is deductible by the recipient
28 under Part 11 (commencing with Section 23001) of Division 2.

29 SEC. 3. Section 6902.5 of the Revenue and Taxation Code, as
30 added by Section 1 of Chapter 10 of the Third Extraordinary
31 Session of the Statutes of 2009, is repealed.

32 SEC. 4. Section 6902.5 of the Revenue and Taxation Code, as
33 added by Section 1 of Chapter 17 of the Third Extraordinary
34 Session of the Statutes of 2009, is amended to read:

35 6902.5. (a) For the purposes of this section:

36 (1) "Qualified taxpayer" means a person who is a qualified
37 taxpayer within the meaning of paragraph (17) of subdivision (b)
38 of Section 17053.85, 17053.95, 23685, or 23695.

39 (2) "Affiliate" means a qualified taxpayer's affiliated corporation
40 that has been assigned any portion of the credit amount by the

1 qualified taxpayer pursuant to subdivision (c) of Section 23685 or
2 subdivision (c) of Section 23695.

3 (3) “Credit amount” means an amount equal to the tax credit
4 amount that would otherwise be allowed to a qualified taxpayer
5 pursuant to Section 17053.85, 17053.95, 23685, or 23695 but for
6 the election made pursuant to this section.

7 (4) “Production period” means the production period as defined
8 in paragraph (12) of subdivision (b) of Section 17053.85, 17053.95,
9 23685, or 23695.

10 (5) (A) “Qualified sales and use taxes” means any state sales
11 and use taxes imposed by Part 1 (commencing with Section 6001),
12 on the operative date of the act adding this section.

13 (B) Notwithstanding subparagraph (A), “qualified sales and use
14 taxes” does not mean taxes imposed by Section 6051.2, 6051.5,
15 6201.2, 6201.5, Part 1.5 (commencing with Section 7200), Part
16 1.6 (commencing with Section 7251), or Section 35 of Article XIII
17 of the California Constitution.

18 (b) (1) A qualified taxpayer may, in lieu of claiming the credit
19 allowed by Section 17053.85, 17053.95, 23685, or 23695 make
20 an irrevocable election to apply the credit amount against qualified
21 sales and use taxes imposed on the qualified taxpayer in accordance
22 with this section.

23 (2) An affiliate may, in lieu of claiming the assigned portion of
24 the credit allowed by Section 23685 or 23695, make an irrevocable
25 election to apply the assigned portion of the credit amount against
26 qualified sales and use taxes imposed on the affiliate in accordance
27 with this section.

28 (c) (1) A qualified taxpayer or affiliate shall submit to the board
29 an irrevocable election, in a form as prescribed by the board, which
30 shall include, but not be limited to, the following information:

31 (A) Representation that the claimant is a qualified taxpayer or
32 an affiliate.

33 (B) Statement of the dates on which the production period began
34 and ended.

35 (C) The credit amount, and if an affiliate, the portion of the
36 credit amount assigned to it and documentation supporting the
37 assignment of that portion of the credit amount.

38 (D) The amount of qualified sales and use taxes the claimant
39 remitted to the board during the period commencing on the first
40 day of the calendar quarter commencing immediately before the

1 beginning of the production period, and ending on the date the
2 claimant was required to file its most recent sales and use tax return
3 with the board.

4 (E) A copy of the credit certificate issued pursuant to
5 subparagraph (C) of paragraph (2) of subdivision (g) of Section
6 17053.85 or 23685 or subparagraph (D) of paragraph ~~(2)~~ (3) of
7 subdivision (g) of Section 17053.95 or 23695.

8 (2) The election shall be filed on or before the date on which
9 the qualified taxpayer or affiliate would first be allowed to claim
10 a credit pursuant to Section 17053.85, 17053.95, 23685, or 23695
11 on its tax return.

12 (d) (1) The claimant may elect to obtain a refund of qualified
13 sales and use taxes paid during the period described in
14 subparagraph (D) of paragraph (1) of subdivision (c). If the
15 claimant elects to obtain a refund of qualified sales and use taxes,
16 the claimant shall file a claim for refund with the irrevocable
17 election described in subdivision (c). The refund amount shall not
18 exceed, for a qualified taxpayer, the credit amount, or for an
19 affiliate, the portion of the credit amount assigned to it.

20 (2) No interest shall be paid on any amount refunded or credited
21 pursuant to paragraph (1).

22 (e) If the claimant does not elect to obtain a refund or in the
23 case where the credit amount, or assigned portion, exceeds the
24 amount of its claim for refund for the qualified sales and use taxes,
25 the claimant may, for the reporting periods in the five years
26 following the last reporting period as described in subparagraph
27 (D) of paragraph (1) of subdivision (c), offset any remaining credit
28 amount, or assigned portion, against the qualified sales and use
29 taxes imposed during those reporting periods.

30 (f) Section 6961 shall apply to any refund, or part thereof, that
31 is erroneously made and any credit, or part thereof, that is
32 erroneously allowed pursuant to this section.

33 (g) The board shall provide an annual listing to the Franchise
34 Tax Board, in a form and manner agreed upon by the board and
35 the Franchise Tax Board, of the qualified taxpayers, or affiliates
36 that have been assigned a portion of the credit allowed under
37 Section 23685 pursuant to subdivision (c) of Section 23685 or
38 Section 23695 pursuant to subdivision (c) of Section 23695, who,
39 during the year, have made an irrevocable election pursuant to this

1 section and the credit amount, or portion of the credit amount,
2 claimed by each qualified taxpayer or affiliate.

3 (h) The board may prescribe rules and regulations for the
4 administration of this section.

5 *SEC. 5. Section 17053.85 of the Revenue and Taxation Code*
6 *is amended to read:*

7 17053.85. (a) (1) For taxable years beginning on or after
8 January 1, 2011, there shall be allowed to a qualified taxpayer a
9 credit against the “net tax,” as defined in Section 17039, in an
10 amount equal to the applicable percentage, as specified in
11 paragraph (4), of the qualified expenditures for the production of
12 a qualified motion picture in California.

13 (2) The credit shall be allowed for the taxable year in which the
14 California Film Commission issues the credit certificate pursuant
15 to subdivision (g) for the qualified motion picture, and shall be for
16 the applicable percentage of all qualified expenditures paid or
17 incurred by the qualified taxpayer in all taxable years for that
18 qualified motion picture.

19 (3) The amount of the credit allowed to a qualified taxpayer
20 shall be limited to the amount specified in the credit certificate
21 issued to the qualified taxpayer by the California Film Commission
22 pursuant to subdivision (g).

23 (4) For purposes of paragraphs (1) and (2), the applicable
24 percentage shall be:

25 (A) Twenty percent of the qualified expenditures attributable
26 to the production of a qualified motion picture in California.

27 (B) Twenty-five percent of the qualified expenditures
28 attributable to the production of a qualified motion picture in
29 California where the qualified motion picture is a television series
30 that relocated to California or an independent film.

31 (b) For purposes of this section:

32 (1) “Ancillary product” means any article for sale to the public
33 that contains a portion of, or any element of, the qualified motion
34 picture.

35 (2) “Budget” means an estimate of all expenses paid or incurred
36 during the production period of a qualified motion picture. It shall
37 be the same budget used by the qualified taxpayer and production
38 company for all qualified motion picture purposes.

1 (3) “Clip use” means a use of any portion of a motion picture,
2 other than the qualified motion picture, used in the qualified motion
3 picture.

4 (4) “Credit certificate” means the certificate issued by the
5 California Film Commission pursuant to subparagraph (C) of
6 paragraph (2) of subdivision (g).

7 (5) (A) “Employee fringe benefits” means the amount allowable
8 as a deduction under this part to the qualified taxpayer involved
9 in the production of the qualified motion picture, exclusive of any
10 amounts contributed by employees, for any year during the
11 production period with respect to any of the following:

12 (i) Employer contributions under any pension, profit-sharing,
13 annuity, or similar plan.

14 (ii) Employer-provided coverage under any accident or health
15 plan for employees.

16 (iii) The employer’s cost of life or disability insurance provided
17 to employees.

18 (B) Any amount treated as wages under clause (i) of
19 subparagraph (A) of paragraph (18) shall not be taken into account
20 under this paragraph.

21 (6) “Independent film” means a motion picture with a minimum
22 budget of one million dollars (\$1,000,000) and a maximum budget
23 of ten million dollars (\$10,000,000) that is produced by a company
24 that is not publicly traded and publicly traded companies do not
25 own, directly or indirectly, more than 25 percent of the producing
26 company.

27 (7) “Licensing” means any grant of rights to distribute the
28 qualified motion picture, in whole or in part.

29 (8) “New use” means any use of a motion picture in a medium
30 other than the medium for which it was initially created.

31 (9) (A) “Postproduction” means the final activities in a qualified
32 motion picture’s production, including editing, foley recording,
33 automatic dialogue replacement, sound editing, scoring and music
34 editing, beginning and end credits, negative cutting, negative
35 processing and duplication, the addition of sound and visual effects,
36 soundmixing, film-to-tape transfers, encoding, and color correction.

37 (B) “Postproduction” does not include the manufacture or
38 shipping of release prints.

39 (10) “Preproduction” means the process of preparation for actual
40 physical production which begins after a qualified motion picture

1 has received a firm agreement of financial commitment, or is
2 greenlit, with, for example, the establishment of a dedicated
3 production office, the hiring of key crew members, and includes,
4 but is not limited to, activities that include location scouting and
5 execution of contracts with vendors of equipment and stage space.

6 (11) “Principal photography” means the phase of production
7 during which the motion picture is actually shot, as distinguished
8 from preproduction and postproduction.

9 (12) “Production period” means the period beginning with
10 preproduction and ending upon completion of postproduction.

11 (13) “Qualified entity” means a personal service corporation as
12 defined in Section 269A(b)(1) of the Internal Revenue Code, a
13 payroll services corporation, or any entity receiving qualified wages
14 with respect to services performed by a qualified individual.

15 (14) (A) “Qualified individual” means any individual who
16 performs services during the production period in an activity related
17 to the production of a qualified motion picture.

18 (B) “Qualified individual” shall not include either of the
19 following:

20 (i) Any individual related to the qualified taxpayer as described
21 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
22 Revenue Code.

23 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
24 the Internal Revenue Code, of the qualified taxpayer.

25 (15) (A) “Qualified motion picture” means a motion picture
26 that is produced for distribution to the general public, regardless
27 of medium, that is one of the following:

28 (i) A feature with a minimum production budget of one million
29 dollars (\$1,000,000) and a maximum production budget of
30 seventy-five million dollars (\$75,000,000).

31 (ii) A movie of the week or miniseries with a minimum
32 production budget of five hundred thousand dollars (\$500,000).

33 (iii) A new television series produced in California with a
34 minimum production budget of one million dollars (\$1,000,000)
35 licensed for original distribution on basic cable.

36 (iv) An independent film.

37 (v) A television series that relocated to California.

38 (B) To qualify as a “qualified motion picture,” all of the
39 following conditions shall be satisfied:

1 (i) At least 75 percent of the production days occur wholly in
2 California or 75 percent of the production budget is incurred for
3 payment for services performed within the state and the purchase
4 or rental of property used within the state.

5 (ii) Production of the qualified motion picture is completed
6 within 30 months from the date on which the qualified taxpayer's
7 application is approved by the California Film Commission. For
8 purposes of this section, a qualified motion picture is "completed"
9 when the process of postproduction has been finished.

10 (iii) The copyright for the motion picture is registered with the
11 United States Copyright Office pursuant to Title 17 of the United
12 States Code.

13 (iv) Principal photography of the qualified motion picture
14 commences after the date on which the application is approved by
15 the California Film Commission, but no later than 180 days after
16 the date of that approval.

17 (C) For the purposes of subparagraph (A), in computing the
18 total wages paid or incurred for the production of a qualified
19 motion picture, all amounts paid or incurred by all persons or
20 entities that share in the costs of the qualified motion picture shall
21 be aggregated.

22 (D) "Qualified motion picture" shall not include commercial
23 advertising, music videos, a motion picture produced for private
24 noncommercial use, such as weddings, graduations, or as part of
25 an educational course and made by students, a news program,
26 current events or public events program, talk show, game show,
27 sporting event or activity, awards show, telethon or other
28 production that solicits funds, reality television program, clip-based
29 programming if more than 50 percent of the content is comprised
30 of licensed footage, documentaries, variety programs, daytime
31 dramas, strip shows, one-half hour (air time) episodic television
32 shows, or any production that falls within the recordkeeping
33 requirements of Section 2257 of Title 18 of the United States Code.

34 (16) "Qualified expenditures" means amounts paid or incurred
35 to purchase or lease tangible personal property used within this
36 state in the production of a qualified motion picture and payments,
37 including qualified wages, for services performed within this state
38 in the production of a qualified motion picture.

39 (17) (A) "Qualified taxpayer" means a taxpayer who has paid
40 or incurred qualified expenditures and has been issued a credit

1 certificate by the California Film Commission pursuant to
2 subdivision (g).

3 (B) In the case of any pass-thru entity, the determination of
4 whether a taxpayer is a qualified taxpayer under this section shall
5 be made at the entity level and any credit under this section is not
6 allowed to the pass-thru entity, but shall be passed through to the
7 partners or shareholders in accordance with applicable provisions
8 of Part 10 (commencing with Section 17001) or Part 11
9 (commencing with Section 23001). For purposes of this paragraph,
10 “pass-thru entity” means any entity taxed as a partnership or “S”
11 corporation.

12 (18) (A) “Qualified wages” means all of the following:

13 (i) Any wages subject to withholding under Division 6
14 (commencing with Section 13000) of the Unemployment Insurance
15 Code that were paid or incurred by any taxpayer involved in the
16 production of a qualified motion picture with respect to a qualified
17 individual for services performed on the qualified motion picture
18 production within this state.

19 (ii) The portion of any employee fringe benefits paid or incurred
20 by any taxpayer involved in the production of the qualified motion
21 picture that are properly allocable to qualified wage amounts
22 described in clause (i).

23 (iii) Any payments made to a qualified entity for services
24 performed in this state by qualified individuals within the meaning
25 of paragraph (14).

26 (iv) Remuneration paid to an independent contractor who is a
27 qualified individual for services performed within this state by that
28 qualified individual.

29 (B) “Qualified wages” shall not include any of the following:

30 (i) Expenses, including wages, related to new use, reuse, clip
31 use, licensing, secondary markets, or residual compensation, or
32 the creation of any ancillary product, including, but not limited to,
33 a soundtrack album, toy, game, trailer, or teaser.

34 (ii) Expenses, including wages, paid or incurred with respect to
35 acquisition, development, turnaround, or any rights thereto.

36 (iii) Expenses, including wages, related to financing, overhead,
37 marketing, promotion, or distribution of a qualified motion picture.

38 (iv) Expenses, including wages, paid per person per qualified
39 motion picture for writers, directors, music directors, music

1 composers, music supervisors, producers, and performers, other
2 than background actors with no scripted lines.

3 (19) “Residual compensation” means supplemental
4 compensation paid at the time that a motion picture is exhibited
5 through new use, reuse, clip use, or in secondary markets, as
6 distinguished from payments made during production.

7 (20) “Reuse” means any use of a qualified motion picture in the
8 same medium for which it was created, following the initial use
9 in that medium.

10 (21) “Secondary markets” means media in which a qualified
11 motion picture is exhibited following the initial media in which it
12 is exhibited.

13 (22) “Television series that relocated to California” means a
14 television series, without regard to episode length or initial media
15 exhibition, that filmed all of its prior season or seasons outside of
16 California and for which the taxpayer certifies that the credit
17 provided pursuant to this section is the primary reason for
18 relocating to California.

19 (c) (1) Notwithstanding any other law, a qualified taxpayer
20 may sell any credit allowed under this section that is attributable
21 to an independent film, as defined in paragraph (6) of subdivision
22 (b), to an unrelated party.

23 (2) The qualified taxpayer shall report to the Franchise Tax
24 Board prior to the sale of the credit, in the form and manner
25 specified by the Franchise Tax Board, all required information
26 regarding the purchase and sale of the credit, including the social
27 security or other taxpayer identification number of the unrelated
28 party to whom the credit has been sold, the face amount of the
29 credit sold, and the amount of consideration received by the
30 qualified taxpayer for the sale of the credit.

31 (3) In the case where the credit allowed under this section
32 exceeds the “net tax,” the excess credit may be carried over to
33 reduce the “net tax” in the following taxable year, and succeeding
34 five taxable years, if necessary, until the credit has been exhausted.

35 (4) A credit shall not be sold pursuant to this subdivision to
36 more than one taxpayer, nor may the credit be resold by the
37 unrelated party to another taxpayer or other party.

38 (5) A party that has acquired tax credits under this section shall
39 be subject to the requirements of this section.

1 (6) In no event may a qualified taxpayer assign or sell any tax
2 credit to the extent the tax credit allowed by this section is claimed
3 on any tax return of the qualified taxpayer.

4 (7) In the event that both the taxpayer originally allocated a
5 credit under this section by the California Film Commission and
6 a taxpayer to whom the credit has been sold both claim the same
7 amount of credit on their tax returns, the Franchise Tax Board may
8 disallow the credit of either taxpayer, so long as the statute of
9 limitations upon assessment remains open.

10 (8) Chapter 3.5 (commencing with Section 11340) of Part 1 of
11 Division 3 of Title 2 of the Government Code does not apply to
12 any standard, criterion, procedure, determination, rule, notice, or
13 guideline established or issued by the Franchise Tax Board
14 pursuant to this subdivision.

15 (9) Subdivision (g) of Section 17039 shall not apply to any
16 credit sold pursuant to this subdivision.

17 (10) For purposes of this subdivision, the unrelated party or
18 parties that purchase a credit pursuant to this subdivision shall be
19 treated as a qualified taxpayer pursuant to paragraph (1) of
20 subdivision (a).

21 (d) No credit shall be allowed pursuant to this section unless
22 the qualified taxpayer provides the following to the California
23 Film Commission:

- 24 (1) Identification of each qualified individual.
- 25 (2) The specific start and end dates of production.
- 26 (3) The total wages paid.
- 27 (4) The amount of qualified wages paid to each qualified
28 individual.
- 29 (5) The copyright registration number, as reflected on the
30 certificate of registration issued under the authority of Section 410
31 of Title 17 of the United States Code, relating to registration of
32 claim and issuance of certificate. The registration number shall be
33 provided on the return claiming the credit.

34 (6) The total amounts paid or incurred to purchase or lease
35 tangible personal property used in the production of a qualified
36 motion picture.

37 (7) Information to substantiate its qualified expenditures.

38 (8) Information required by the California Film Commission
39 under regulations promulgated pursuant to subdivision (g)
40 necessary to verify the amount of credit claimed.

(e) The California Film Commission may prescribe rules and regulations to carry out the purposes of this section including any rules and regulations necessary to establish procedures, processes, requirements, and rules identified in or required to implement this section. The regulations shall include provisions to set aside a percentage of annual credit allocations for independent films.

(f) If the qualified taxpayer fails to provide the copyright registration number as required in paragraph (5) of subdivision (d), the credit shall be disallowed and assessed and collected under Section 19051 until the procedures are satisfied.

(g) For purposes of this section, the California Film Commission shall do the following:

(1) On or after July 1, 2009, and before July 1, 2017, allocate tax credits to applicants.

(A) Establish a procedure for applicants to file with the California Film Commission a written application, on a form jointly prescribed by the California Film Commission and the Franchise Tax Board for the allocation of the tax credit. The application shall include, but not be limited to, the following information:

(i) The budget for the motion picture production.

(ii) The number of production days.

(iii) A financing plan for the production.

(iv) The diversity of the workforce employed by the applicant, including, but not limited to, the ethnic and racial makeup of the individuals employed by the applicant during the production of the qualified motion picture, to the extent possible.

(v) All members of a combined reporting group, if known at the time of the application.

(vi) Financial information, if available, including, but not limited to, the most recently produced balance sheets, annual statements of profits and losses, audited or unaudited financial statements, summary budget projections or results, or the functional equivalent of these documents of a partnership or owner of a single member limited liability company that is disregarded pursuant to Section 23038. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.

(vii) The names of all partners in a partnership not publicly traded or the names of all members of a limited liability company classified as a partnership not publicly traded for California income tax purposes that have a financial interest in the applicant's

1 qualified motion picture. The information provided pursuant to
2 this clause shall be confidential and shall not be subject to public
3 disclosure.

4 (viii) Detailed narratives, for use only by the Legislative
5 Analyst's Office in conducting a study of the effectiveness of this
6 credit, that describe the extent to which the credit is expected to
7 influence or affect filming and other business location decisions,
8 hiring decisions, salary decisions, and any other financial matters
9 of the applicant.

10 (ix) Any other information deemed relevant by the California
11 Film Commission or the Franchise Tax Board.

12 (B) Establish criteria, consistent with the requirements of this
13 section, for allocating tax credits.

14 (C) Determine and designate applicants who meet the
15 requirements of this section.

16 (D) Process and approve, or reject, all applications on a
17 first-come-first-served basis.

18 (E) Subject to the annual cap established as provided in
19 subdivision (i), allocate an aggregate amount of credits under this
20 section and Section 23685, and allocate any carryover of
21 unallocated credits from prior years.

22 (2) Certify tax credits allocated to qualified taxpayers.

23 (A) Establish a verification procedure for the amount of qualified
24 expenditures paid or incurred by the applicant, including, but not
25 limited to, updates to the information in subparagraph (A) of
26 paragraph (1) of subdivision (g).

27 (B) Establish audit requirements that must be satisfied before
28 a credit certificate may be issued by the California Film
29 Commission.

30 (C) (i) Establish a procedure for a qualified taxpayer to report
31 to the California Film Commission, prior to the issuance of a credit
32 certificate, the following information:

33 (I) If readily available, a list of the states, provinces, or other
34 jurisdictions in which any member of the applicant's combined
35 reporting group in the same business unit as the qualified taxpayer
36 that, in the preceding calendar year, has produced a qualified
37 motion picture intended for release in the United States market.
38 For purposes of this clause, "qualified motion picture" shall not
39 include any episodes of a television series that were complete or
40 in production prior to July 1, 2009.

(II) Whether a qualified motion picture described in subclause (I) was awarded any financial incentive by the state, province, or other jurisdiction that was predicated on the performance of primary principal photography or postproduction in that location.

(ii) The California Film Commission may provide that the report required by this subparagraph be filed in a single report provided on a calendar year basis for those qualified taxpayers that receive multiple credit certificates in a calendar year.

(D) Issue a credit certificate to a qualified taxpayer upon completion of the qualified motion picture reflecting the credit amount allocated after qualified expenditures have been verified under this section. The amount of credit shown in the credit certificate shall not exceed the amount of credit allocated to that qualified taxpayer pursuant to this section.

(3) Obtain, when possible, the following information from applicants that do not receive an allocation of credit:

(A) Whether the qualified motion picture that was the subject of the application was completed.

(B) If completed, in which state or foreign jurisdiction was the primary principal photography completed.

(C) Whether the applicant received any financial incentives from the state or foreign jurisdiction to make the qualified motion picture in that location.

(4) Provide the Legislative Analyst's Office, upon request, any or all application materials or any other materials received from, or submitted by, the applicants, in electronic format when available, including, but not limited to, information provided pursuant to clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

(5) The information provided to the California Film Commission pursuant to this section shall constitute confidential tax information for purposes of Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2.

(h) (1) The California Film Commission shall annually provide the Legislative Analyst's Office, the Franchise Tax Board, and the board with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission. The list shall include the names and taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, of the qualified taxpayer.

(2) (A) Notwithstanding paragraph (5) of subdivision (g), the California Film Commission shall annually post on its Internet Web site and make available for public release the following:

(i) A table which includes all of the following information: a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission, the number of production days in California the qualified taxpayer represented in its application would occur, the number of California jobs that the qualified taxpayer represented in its application would be directly created by the production, and the total amount of qualified expenditures expected to be spent by the production.

(ii) A narrative staff summary describing the production of the qualified taxpayer as well as background information regarding the qualified taxpayer contained in the qualified taxpayer's application for the credit.

(B) Nothing in this subdivision shall be construed to make the information submitted by an applicant for a tax credit under this section a public record.

(i) (1) The aggregate amount of credits that may be allocated in any fiscal year pursuant to this section and Section 23685 shall be an amount equal to the sum of all of the following:

(A) One hundred million dollars (\$100,000,000) in credits for the 2009–10 fiscal year and each fiscal year thereafter, through and including the ~~2016–17~~ 2014–15 fiscal year.

(B) In addition to the amounts specified in subparagraph (A), one hundred million dollars (\$100,000,000) in the aggregate amount of credits that may be allocated for the 2015–16 and 2016–17 fiscal years.

~~(B)~~

(C) The unused allocation credit amount, if any, for the preceding fiscal year.

~~(C)~~

(D) The amount of previously allocated credits not certified.

(2) If the amount of credits applied for in any particular fiscal year exceeds the aggregate amount of tax credits authorized to be allocated under this section, such excess shall be treated as having been applied for on the first day of the subsequent fiscal year. However, credits may not be allocated from a fiscal year other than the fiscal year in which the credit was originally applied for or the immediately succeeding fiscal year.

(3) Notwithstanding the foregoing, the California Film Commission shall set aside up to ten million dollars (\$10,000,000) of tax credits each fiscal year for independent films allocated in accordance with rules and regulations developed pursuant to subdivision (e).

(4) Any act that reduces the amount that may be allocated pursuant to paragraph (1) constitutes a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution and may be passed by not less than two-thirds of all Members elected to each of the two houses of the Legislature.

(j) The California Film Commission shall have the authority to allocate tax credits in accordance with this section and in accordance with any regulations prescribed pursuant to subdivision (e) upon adoption.

~~SEC. 5.~~

SEC. 6. Section 17053.95 is added to the Revenue and Taxation Code, to read:

17053.95. (a) (1) For taxable years beginning on or after January 1, 2016, there shall be allowed to a qualified taxpayer a credit against the “net tax,” as defined in Section 17039, subject to a computation and ranking by the California Film Commission in subdivision (g) and the allocation amount categories described in subdivision (i), in an amount ~~not to exceed equal to 20 percent or 25 percent, whichever is~~ the applicable credit percentage, ~~as specified described~~ in paragraph (4), of the qualified expenditures for the production of a qualified motion picture in California. A credit shall not be allowed under this section for any qualified expenditures for the production of a motion picture in California if a credit has been claimed for those same expenditures under Section 17053.85.

(2) The credit shall be allowed for the taxable year in which the California Film Commission issues the credit certificate pursuant to subdivision (g) for the qualified motion picture, but in no instance prior to July 1, 2016, and shall be for the applicable percentage of all qualified expenditures paid or incurred by the qualified taxpayer in all taxable years for that qualified motion picture.

(3) The amount of the credit allowed to a qualified taxpayer shall be limited to the amount specified in the credit certificate

1 issued to the qualified taxpayer by the California Film Commission
2 pursuant to subdivision (g).

3 (4) For purposes of paragraphs (1) and (2), the applicable credit
4 percentage shall be:

5 (A) Twenty percent of the qualified expenditures attributable
6 to the production of a qualified motion picture in California,
7 including, but not limited to, a feature, up to one hundred million
8 dollars (\$100,000,000) in qualified expenditures, or a television
9 series that relocated to California that is in its second or subsequent
10 years of receiving a tax credit allocation pursuant to this section
11 or Section 17053.85.

12 (B) Twenty-five percent of the qualified expenditures
13 attributable to the production of a qualified motion picture in
14 California where the qualified motion picture is a television series
15 that relocated to California in its first year of receiving a tax credit
16 allocation pursuant to this section.

17 (C) Twenty-five percent of the qualified expenditures, up to ten
18 million dollars (\$10,000,000), attributable to the production of a
19 qualified motion picture that is an independent film.

20 (D) (i) In order to carry out ~~clause (vii) of subparagraph (D) of~~
21 ~~paragraph (2) of subdivision (g), subparagraph (D) of paragraph~~
22 ~~(2) of subdivision (d)~~, the California Film Commission shall
23 increase the applicable credit percentage by 5 percent, not to exceed
24 a maximum of 25 percent of qualified expenditures relating to
25 original photography outside the Los Angeles zone.

26 (ii) For purposes of this subparagraph:

27 (I) “Applicable period” means the period that commences with
28 preproduction and ends when original photography concludes. The
29 applicable period includes the time necessary to strike a remote
30 location and return to the Los Angeles zone.

31 (II) “Los Angeles zone” means the area within a circle 30 miles
32 in radius from Beverly Boulevard and La Cienega Boulevard, Los
33 Angeles, California, and includes Agua Dulce, Castaic, including
34 Lake Castaic, Leo Carillo State Beach, Ontario International
35 Airport, Piru, and Pomona, including the Los Angeles County
36 Fairgrounds. The Metro Goldwyn Mayer, Inc. Conejo Ranch
37 property is within the Los Angeles zone.

38 (III) “Original photography” includes principal photography
39 and reshooting original footage.

(IV) “Qualified expenditures relating to original photography outside the Los Angeles zone” means amounts paid or incurred during the applicable period for tangible personal property purchased or leased and used or consumed outside the Los Angeles zone and relating to original photography outside the Los Angeles zone and qualified wages paid for services performed outside the Los Angeles zone and relating to original photography outside the Los Angeles zone.

(E) Twenty-five percent of the qualified expenditures relating to music scoring and music track recording by musicians attributable to the production of a qualified motion picture in California.

(F) Twenty-five percent of the qualified expenditures relating to qualified visual effects attributable to the production of a qualified motion picture in California.

(b) For purposes of this section:

(1) “Ancillary product” means any article for sale to the public that contains a portion of, or any element of, the qualified motion picture.

(2) “Budget” means an estimate of all expenses paid or incurred during the production period of a qualified motion picture. It shall be the same budget used by the qualified taxpayer and production company for all qualified motion picture purposes.

(3) “Clip use” means a use of any portion of a motion picture, other than the qualified motion picture, used in the qualified motion picture.

(4) “Credit certificate” means the certificate issued by the California Film Commission pursuant to subparagraph (C) of paragraph (3) of subdivision (g).

(5) (A) “Employee fringe benefits” means the amount allowable as a deduction under this part to the qualified taxpayer involved in the production of the qualified motion picture, exclusive of any amounts contributed by employees, for any year during the production period with respect to any of the following:

(i) Employer contributions under any pension, profit-sharing, annuity, or similar plan.

(ii) Employer-provided coverage under any accident or health plan for employees.

(iii) The employer’s cost of life or disability insurance provided to employees.

1 (B) Any amount treated as wages under clause (i) of
2 subparagraph (A) of paragraph (21) shall not be taken into account
3 under this paragraph.

4 (6) “Independent film” means a motion picture with a minimum
5 budget of one million dollars (\$1,000,000) that is produced by a
6 company that is not publicly traded and publicly traded companies
7 do not own, directly or indirectly, more than 25 percent of the
8 producing company.

9 (7) “Jobs ratio” means the amount of qualified wages paid to
10 qualified individuals divided by the amount of tax credit, as
11 computed by the California Film Commission.

12 (8) “Licensing” means any grant of rights to distribute the
13 qualified motion picture, in whole or in part.

14 (9) “New use” means any use of a motion picture in a medium
15 other than the medium for which it was initially created.

16 (10) “Pilot for a new television series” means the initial episode
17 produced for a proposed television series.

18 (11) (A) “Postproduction” means the final activities in a
19 qualified motion picture’s production, including editing, foley
20 recording, automatic dialogue replacement, sound editing, scoring,
21 music track recording by musicians and music editing, beginning
22 and end credits, negative cutting, negative processing and
23 duplication, the addition of sound and visual effects, sound mixing,
24 film-to-tape transfers, encoding, and color correction.

25 (B) “Postproduction” does not include the manufacture or
26 shipping of release prints or their equivalent.

27 (12) “Preproduction” means the process of preparation for actual
28 physical production which begins after a qualified motion picture
29 has received a firm agreement of financial commitment, or is
30 greenlit, with, for example, the establishment of a dedicated
31 production office, the hiring of key crew members, and includes,
32 but is not limited to, activities that include location scouting and
33 execution of contracts with vendors of equipment and stage space.

34 (13) “Principal photography” means the phase of production
35 during which the motion picture is actually shot, as distinguished
36 from preproduction and postproduction.

37 (14) “Production period” means the period beginning with
38 preproduction and ending upon completion of postproduction.

39 (15) “Qualified entity” means a personal service corporation as
40 defined in Section 269A(b)(1) of the Internal Revenue Code, a

1 payroll services corporation, or any entity receiving qualified wages
2 with respect to services performed by a qualified individual.

3 (16) “Qualified expenditures” means amounts paid or incurred
4 for tangible personal property purchased or leased, and used, within
5 this state in the production of a qualified motion picture and
6 payments, including qualified wages, for services performed within
7 this state in the production of a qualified motion picture.

8 (17) (A) “Qualified individual” means any individual who
9 performs services during the production period in an activity related
10 to the production of a qualified motion picture.

11 (B) “Qualified individual” shall not include either of the
12 following:

13 (i) Any individual related to the qualified taxpayer as described
14 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
15 Revenue Code.

16 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
17 the Internal Revenue Code, of the qualified taxpayer.

18 (18) (A) “Qualified motion picture” means a motion picture
19 that is produced for distribution to the general public, regardless
20 of medium, that is one of the following:

21 (i) A feature with a minimum production budget of one million
22 dollars (\$1,000,000).

23 (ii) A movie of the week or miniseries with a minimum
24 production budget of five hundred thousand dollars (\$500,000).

25 (iii) A new television series of episodes longer than 40 minutes
26 each of running time, exclusive of commercials, that is produced
27 in California, with a minimum production budget of one million
28 dollars (\$1,000,000) per episode.

29 (iv) An independent film.

30 (v) A television series that relocated to California.

31 (vi) A pilot for a new television series that is longer than 40
32 minutes of running time, exclusive of commercials, that is produced
33 in California, and with a minimum production budget of one
34 million dollars (\$1,000,000).

35 (B) To qualify as a “qualified motion picture,” all of the
36 following conditions shall be satisfied:

37 (i) At least 75 percent of the principal photography days occur
38 wholly in California or 75 percent of the production budget is
39 incurred for payment for services performed within the state and
40 the purchase or rental of property used within the state.

1 (ii) Production of the qualified motion picture is completed
2 within 30 months from the date on which the qualified taxpayer's
3 application is approved by the California Film Commission. For
4 purposes of this section, a qualified motion picture is "completed"
5 when the process of postproduction has been finished.

6 (iii) The copyright for the motion picture is registered with the
7 United States Copyright Office pursuant to Title 17 of the United
8 States Code.

9 (iv) Principal photography of the qualified motion picture
10 commences after the date on which the application is approved by
11 the California Film Commission, but no later than 180 days after
12 the date of that approval unless death, disability, or disfigurement
13 of the director or of a principal cast member, an act of God,
14 including, but not limited to, fire, flood, earthquake, storm,
15 hurricane, or other natural disaster, terrorist activities, or
16 government sanction has directly prevented a production's ability
17 to begin principal photography within the prescribed 180-day
18 commencement period.

19 (C) For the purposes of subparagraph (A), in computing the
20 total wages paid or incurred for the production of a qualified
21 motion picture, all amounts paid or incurred by all persons or
22 entities that share in the costs of the qualified motion picture shall
23 be aggregated.

24 (D) "Qualified motion picture" shall not include commercial
25 advertising, music videos, a motion picture produced for private
26 noncommercial use, such as weddings, graduations, or as part of
27 an educational course and made by students, a news program,
28 current events or public events program, talk show, game show,
29 sporting event or activity, awards show, telethon or other
30 production that solicits funds, reality television program, clip-based
31 programming if more than 50 percent of the content is comprised
32 of licensed footage, documentaries, variety programs, daytime
33 dramas, strip shows, one-half hour (air time) episodic television
34 shows, or any production that falls within the recordkeeping
35 requirements of Section 2257 of Title 18 of the United States Code.

36 (19) (A) "Qualified taxpayer" means a taxpayer who has paid
37 or incurred qualified expenditures, participated in the Career
38 Readiness requirement, and has been issued a credit certificate by
39 the California Film Commission pursuant to subdivision (g).

(B) In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section is not allowed to the pass-thru entity, but shall be passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, “pass-thru entity” means any entity taxed as a partnership or “S” corporation.

(20) “Qualified visual effects” means visual effects where at least 75 percent or a minimum of ten million dollars (\$10,000,000) of the qualified expenditures for the visual effects is paid or incurred in California.

(21) (A) “Qualified wages” means all of the following:

(i) Any wages subject to withholding under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code that were paid or incurred by any taxpayer involved in the production of a qualified motion picture with respect to a qualified individual for services performed on the qualified motion picture production within this state.

(ii) The portion of any employee fringe benefits paid or incurred by any taxpayer involved in the production of the qualified motion picture that are properly allocable to qualified wage amounts described in clauses (i), (iii), and (iv).

(iii) Any payments made to a qualified entity for services performed in this state by qualified individuals within the meaning of paragraph (17).

(iv) Remuneration paid to an independent contractor who is a qualified individual for services performed within this state by that qualified individual.

(B) “Qualified wages” shall not include any of the following:

(i) Expenses, including wages, related to new use, reuse, clip use, licensing, secondary markets, or residual compensation, or the creation of any ancillary product, including, but not limited to, a soundtrack album, toy, game, trailer, or teaser.

(ii) Expenses, including wages, paid or incurred with respect to acquisition, development, turnaround, or any rights thereto.

(iii) Expenses, including wages, related to financing, overhead, marketing, promotion, or distribution of a qualified motion picture.

1 (iv) Expenses, including wages, paid per person per qualified
2 motion picture for writers, directors, music directors, music
3 composers, music supervisors, producers, and performers, other
4 than background actors with no scripted lines.

5 (22) “Residual compensation” means supplemental
6 compensation paid at the time that a motion picture is exhibited
7 through new use, reuse, clip use, or in secondary markets, as
8 distinguished from payments made during production.

9 (23) “Reuse” means any use of a qualified motion picture in the
10 same medium for which it was created, following the initial use
11 in that medium.

12 (24) “Secondary markets” means media in which a qualified
13 motion picture is exhibited following the initial media in which it
14 is exhibited.

15 (25) “Television series that relocated to California” means a
16 television series, without regard to episode length or initial media
17 exhibition, with a minimum production budget of one million
18 dollars (\$1,000,000) per episode, that filmed no fewer than its most
19 recent two seasons outside of California or has filmed all seasons
20 outside of California and for which the taxpayer certifies that the
21 credit provided pursuant to this section is the primary reason for
22 relocating to California.

23 (26) “Visual effects” means the creation, alteration, or
24 enhancement of images that cannot be captured on a set or location
25 during live action photography and therefore is accomplished in
26 postproduction. It includes, but is not limited to, matte paintings,
27 animation, set extensions, computer-generated objects, characters
28 and environments, compositing (combining two or more elements
29 in a final image), and wire removals. “Visual effects” does not
30 include fully animated projects, whether created by traditional or
31 digital means.

32 (c) (1) Notwithstanding any other law, a qualified taxpayer
33 may sell any credit allowed under this section that is attributable
34 to an independent film, as defined in paragraph (6) of subdivision
35 (b), to an unrelated party.

36 (2) The qualified taxpayer shall report to the Franchise Tax
37 Board prior to the sale of the credit, in the form and manner
38 specified by the Franchise Tax Board, all required information
39 regarding the purchase and sale of the credit, including the social
40 security or other taxpayer identification number of the unrelated

1 party to whom the credit has been sold, the face amount of the
2 credit sold, and the amount of consideration received by the
3 qualified taxpayer for the sale of the credit.

4 (3) In the case where the credit allowed under this section
5 exceeds the “net tax,” the excess credit may be carried over to
6 reduce the “net tax” in the following taxable year, and succeeding
7 five taxable years, if necessary, until the credit has been exhausted.

8 (4) A credit shall not be sold pursuant to this subdivision to
9 more than one taxpayer, nor may the credit be resold by the
10 unrelated party to another taxpayer or other party.

11 (5) A party that has acquired tax credits under this subdivision
12 shall be subject to the requirements of this section.

13 (6) In no event may a qualified taxpayer assign or sell any tax
14 credit to the extent the tax credit allowed by this section is claimed
15 on any tax return of the qualified taxpayer.

16 (7) In the event that both the taxpayer originally allocated a
17 credit under this section by the California Film Commission and
18 a taxpayer to whom the credit has been sold both claim the same
19 amount of credit on their tax returns, the Franchise Tax Board may
20 disallow the credit of either taxpayer, so long as the statute of
21 limitations upon assessment remains open.

22 (8) Chapter 3.5 (commencing with Section 11340) of Part 1 of
23 Division 3 of Title 2 of the Government Code does not apply to
24 any standard, criterion, procedure, determination, rule, notice, or
25 guideline established or issued by the Franchise Tax Board
26 pursuant to this subdivision.

27 (9) Subdivision (g) of Section 17039 shall not apply to any
28 credit sold pursuant to this subdivision.

29 (10) For purposes of this subdivision, the unrelated party or
30 parties that purchase a credit pursuant to this subdivision shall be
31 treated as a qualified taxpayer pursuant to paragraph (1) of
32 subdivision (a).

33 (d) (1) No credit shall be allowed pursuant to this section unless
34 the qualified taxpayer provides the following to the California
35 Film Commission:

36 (A) Identification of each qualified individual.

37 (B) The specific start and end dates of production.

38 (C) The total wages paid.

39 (D) The total amount of qualified wages paid to qualified
40 individuals.

1 (E) The copyright registration number, as reflected on the
2 certificate of registration issued under the authority of Section 410
3 of Title 17 of the United States Code, relating to registration of
4 claim and issuance of certificate. The registration number shall be
5 provided on the return claiming the credit.

6 (F) The total amounts paid or incurred to purchase or lease
7 tangible personal property used in the production of a qualified
8 motion picture.

9 (G) Information to substantiate its qualified expenditures.

10 (H) Information required by the California Film Commission
11 under regulations promulgated pursuant to subdivision (g)
12 necessary to verify the amount of credit claimed.

13 (I) Provides documentation verifying completion of the Career
14 Readiness requirement.

15 (2) (A) Based on the information provided in paragraph (1),
16 the California Film Commission shall recompute the jobs ratio
17 previously computed in subdivision (g) and compare this
18 recomputed jobs ratio to the jobs ratio that the qualified taxpayer
19 previously listed on the application submitted pursuant to
20 subdivision (g). If the California Film Commission determines
21 that the jobs ratio has been reduced by more than 10 percent, the
22 California Film Commission shall reduce the amount of credit
23 allowed by an equal percentage, unless the qualified taxpayer
24 demonstrates, and the California Film Commission determines,
25 that reasonable cause exists for the ~~job~~ jobs ratio reduction.

26 (B) If the California Film Commission determines that the jobs
27 ratio has been reduced by more than 20 percent, the California
28 Film Commission shall not accept an application described in
29 subdivision (g) from that qualified taxpayer or any member of the
30 qualified taxpayer's controlled group for a period of not less than
31 one year from the date of that determination, unless the qualified
32 taxpayer demonstrates, and the California Film Commission
33 determines, that reasonable cause exists for the ~~job~~ jobs ratio
34 reduction.

35 (C) *If the California Film Commission determines that the jobs*
36 *ratio has been reduced by more than 20 percent for an independent*
37 *film, the tax credit allocation to the independent film shall be*
38 *revoked unless the qualified taxpayer demonstrates, and the*
39 *California Film Commission determines, that reasonable cause*
40 *exists for the jobs ratio reduction.*

1 (D) Subject to subparagraph (D) of paragraph (4) of subdivision
2 (a), the California Film Commission shall increase the applicable
3 credit percentage by 5 percent, not to exceed a maximum of 25
4 percent, if the qualified motion picture paid or incurred outside
5 the Los Angeles zone the qualified expenditures relating to original
6 photography outside the Los Angeles zone.

7 (E) For the purposes of this paragraph, “reasonable cause”
8 means unforeseen circumstances beyond the control of the qualified
9 taxpayer, such as, but not limited to, the cancellation of a television
10 series prior to the completion of the scheduled number of episodes
11 or other similar circumstances as determined by the California
12 Film Commission in regulations to be adopted pursuant to
13 subdivision (e).

14 (e) (1) (A) Subject to the Administrative Procedure Act
15 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
16 Division 3 of Title 2 of the Government Code), the California Film
17 Commission shall adopt rules and regulations to implement a
18 Career Readiness requirement by which the California Film
19 Commission shall identify training and public service opportunities
20 that may include, but not be limited to, hiring interns, public service
21 announcements, and community outreach and may prescribe rules
22 and regulations to carry out the purposes of this section, including,
23 ~~clauses (iv) and (v) subparagraph (E) of paragraph (2) of~~
24 ~~subdivision (d) and clause (iv) of subparagraph (D) of paragraph~~
25 ~~(2) of subdivision (g) and, (g), and~~ including any rules and
26 regulations necessary to establish procedures, processes,
27 requirements, application fee structure, and rules identified in or
28 required to implement this section, including credit and logo
29 requirements.

30 (B) Notwithstanding any other law, prior to preparing a notice
31 of proposed action pursuant to Section 11346.4 of the Government
32 Code and prior to making any revision to the proposed regulation
33 other than a change that is nonsubstantial or solely grammatical
34 in nature pursuant to Article 6 (commencing with Section 11349)
35 of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government
36 Code, the Governor’s Office of Business and Economic
37 Development shall first approve the proposed regulation or
38 proposed change to a proposed regulation regarding allocating
39 the credit pursuant to subdivision (i), computing the jobs ratio as
40 described in subdivisions (d) and (g), and defining “reasonable

1 *cause” pursuant to subparagraph (E) of paragraph (2) of*
2 *subdivision (d).*

3 (2) (A) Implementation of this section for the 2015–16 fiscal
4 year is deemed an emergency and necessary for the immediate
5 preservation of the public peace, health, and safety, or general
6 welfare and, therefore, the California Film Commission is hereby
7 authorized to adopt emergency regulations ~~only as necessary~~ to
8 implement this section during the 2015–16 fiscal year in
9 accordance with the rulemaking provisions of the Administrative
10 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
11 Part 1 of Division 3 of Title 2 of the Government Code).

12 (B) Nothing in this paragraph shall be construed to require the
13 Governor’s Office of Business and Economic Development to
14 approve emergency regulations adopted pursuant to this paragraph.

15 (f) If the qualified taxpayer fails to provide the copyright
16 registration number as required in subparagraph (E) of paragraph
17 (1) of subdivision (d), the credit shall be disallowed and assessed
18 and collected under Section 19051 until the procedures are
19 satisfied.

20 (g) For purposes of this section, the California Film Commission
21 shall do the following:

22 (1) Subject to the requirements of subparagraphs (A) through
23 (E), inclusive, of paragraph (2), on or after January 1, 2015, and
24 before July 1, 2016, in one or more allocation periods per fiscal
25 year, allocate tax credits to applicants.

26 (2) On or after July 1, 2016, and before July 1, 2019, in two or
27 more allocation periods per fiscal year, allocate tax credits to
28 applicants.

29 (A) Establish a procedure for applicants to file with the
30 California Film Commission a written application, on a form jointly
31 prescribed by the California Film Commission and the Franchise
32 Tax Board for the allocation of the tax credit. The application shall
33 include, but not be limited to, the following information:

34 (i) The budget for the motion picture production.

35 (ii) The number of production days.

36 (iii) A financing plan for the production.

37 (iv) The diversity of the workforce employed by the applicant,
38 including, but not limited to, the ethnic and racial makeup of the
39 individuals employed by the applicant during the production of
40 the qualified motion picture, to the extent possible.

1 (v) All members of a combined reporting group, if known at
2 the time of the application.

3 (vi) Financial information, if available, including, but not limited
4 to, the most recently produced balance sheets, annual statements
5 of profits and losses, audited or unaudited financial statements,
6 summary budget projections or results, or the functional equivalent
7 of these documents of a partnership or owner of a single member
8 limited liability company that is disregarded pursuant to Section
9 23038. The information provided pursuant to this clause shall be
10 confidential and shall not be subject to public disclosure.

11 (vii) The names of all partners in a partnership not publicly
12 traded or the names of all members of a limited liability company
13 classified as a partnership not publicly traded for California income
14 tax purposes that have a financial interest in the applicant's
15 qualified motion picture. The information provided pursuant to
16 this clause shall be confidential and shall not be subject to public
17 disclosure.

18 (viii) The amount of qualified wages the applicant expects to
19 pay to qualified individuals. ~~The information provided pursuant~~
20 ~~to this clause shall be confidential and shall not be subject to public~~
21 ~~disclosure.~~

22 (ix) The amount of tax credit requested not to exceed the
23 applicable credit percentage described in paragraph (4) of
24 subdivision (a). ~~The information provided pursuant to this clause~~
25 ~~shall be confidential and shall not be subject to public disclosure.~~

26 (x) A statement establishing that the tax credit described in this
27 section is a significant factor in the applicant's choice of location
28 for the qualified motion picture. The statement shall include
29 information about whether the qualified motion picture is at risk
30 of not being filmed or specify the jurisdiction or jurisdictions in
31 which the qualified motion picture will be located in the absence
32 of the tax credit. The statement shall be signed by an officer or
33 executive of the applicant.

34 (xi) Any other information deemed relevant by the California
35 Film Commission or the Franchise Tax Board.

36 (B) Establish criteria, consistent with the requirements of this
37 section, for allocating tax credits.

38 (C) Determine and designate applicants who meet the
39 requirements of this section.

1 (D) (i) For purposes of allocating the credit amounts subject to
2 the categories described in subdivision (i) in any fiscal year, the
3 California Film Commission shall do all of the following:

4 (ii) For each allocation date and for each category, list each
5 applicant from highest to lowest according to the jobs ratio as
6 computed by the California Film Commission.

7 (iii) Subject to the applicable credit percentage, allocate the
8 credit to each applicant according to the highest jobs ratio, working
9 down the list, until the credit *amount* is exhausted.

10 ~~(iv) Pursuant to regulations adopted pursuant to subdivision (e),~~
11 ~~the California Film Commission may increase the jobs ratio up to~~
12 ~~10 percent for applications where 75 percent of the principal~~
13 ~~photography days occur wholly in the state and 75 percent of the~~
14 ~~production budget is incurred for payment for services performed~~
15 ~~within the state and the purchase or rental of property used within~~
16 ~~the state.~~

17 ~~(v) Pursuant to regulations adopted pursuant to subdivision (e),~~
18 ~~in addition to the jobs ratio increase authorized by clause (iv), the~~
19 ~~California Film Commission may additionally increase the jobs~~
20 ~~ratio up to 10 percent for applications that will use facilities in the~~
21 ~~state for at least 75 percent of the postproduction.~~

22 *(iv) Pursuant to regulations adopted pursuant to subdivision*
23 *(e), the California Film Commission may increase the jobs ratio*
24 *by up to 25 percent if a qualified motion picture increases*
25 *economic activity in California according to criteria developed*
26 *by the California Film Commission that would include, but not be*
27 *limited to, such factors as, the amount of the production and*
28 *postproduction spending in California, the utilization of production*
29 *facilities in California, and other criteria measuring economic*
30 *impact in California as determined by the Film Commission.*

31 ~~(vi)~~

32 *(v) Notwithstanding any other provision, any new television*
33 *series, relocating television series, or any new television series*
34 *based on a pilot for a new television series described in paragraph*
35 *(9) of subdivision (b), where that pilot has been previously that*
36 *has been approved and issued a credit allocation by the California*
37 *Film Commission either under this section or section, Section*
38 *23695, 17053.85, or 23685 shall be issued a credit for each*
39 *subsequent year year, in an amount equal to the prior credit*

1 *amount, for the life of that television series qualified motion picture*
2 *whenever credits are allocated within a fiscal year.*

3 ~~(vii) Subject to subparagraph (D) of paragraph (4) of subdivision~~
4 ~~(a), the California Film Commission shall increase the applicable~~
5 ~~credit percentage by 5 percent, not to exceed a maximum of 25~~
6 ~~percent, if the qualified motion picture paid or incurred outside~~
7 ~~the Los Angeles zone the qualified expenditures relating to original~~
8 ~~photography outside the Los Angeles zone.~~

9 (E) Subject to the annual cap and the allocation credit amounts
10 based on categories described in subdivision (i), allocate an
11 aggregate amount of credits under this section and Section 23695,
12 and allocate any carryover of unallocated credits from prior years
13 and the amount of any credits reduced pursuant to paragraph (2)
14 of subdivision (d).

15 (3) Certify tax credits allocated to qualified taxpayers.

16 (A) Establish a verification procedure for the amount of qualified
17 expenditures paid or incurred by the applicant, including, but not
18 limited to, updates to the information in subparagraph (A) of
19 paragraph (2) of subdivision (g).

20 (B) Establish audit requirements that must be satisfied before
21 a credit certificate may be issued by the California Film
22 Commission.

23 (C) (i) Establish a procedure for a qualified taxpayer to report
24 to the California Film Commission, prior to the issuance of a credit
25 certificate, the following information:

26 (I) If readily available, a list of the states, provinces, or other
27 jurisdictions in which any member of the applicant's combined
28 reporting group in the same business unit as the qualified taxpayer
29 that, in the preceding calendar year, has produced a qualified
30 motion picture intended for release in the United States market.
31 For purposes of this clause, "qualified motion picture" shall not
32 include any episodes of a television series that were complete or
33 in production prior to July 1, 2016.

34 (II) Whether a qualified motion picture described in subclause
35 (I) was awarded any financial incentive by the state, province, or
36 other jurisdiction that was predicated on the performance of
37 primary principal photography or postproduction in that location.

38 (ii) The California Film Commission may provide that the report
39 required by this subparagraph be filed in a single report provided

1 on a calendar year basis for those qualified taxpayers that receive
2 multiple credit certificates in a calendar year.

3 (D) Issue a credit certificate to a qualified taxpayer upon
4 completion of the qualified motion picture reflecting the credit
5 amount allocated after qualified expenditures have been verified
6 and the jobs ratio computed under this section. The amount of
7 credit shown in the credit certificate shall not exceed the amount
8 of credit allocated to that qualified taxpayer pursuant to this section.

9 (4) Obtain, when possible, the following information from
10 applicants that do not receive an allocation of credit:

11 (A) Whether the qualified motion picture that was the subject
12 of the application was completed.

13 (B) If completed, in which state or foreign jurisdiction was the
14 primary principal photography completed.

15 (C) Whether the applicant received any financial incentives
16 from the state or foreign jurisdiction to make the qualified motion
17 picture in that location.

18 (5) Provide the Legislative Analyst's Office, upon request, any
19 or all application materials or any other materials received from,
20 or submitted by, the applicants, in electronic format when available,
21 including, but not limited to, information provided pursuant to
22 clauses (i) to (xi) inclusive, of subparagraph (A) of paragraph (2).

23 (6) The information provided to the California Film Commission
24 pursuant to this section shall constitute confidential tax information
25 for purposes of Article 2 (commencing with Section 19542) of
26 Chapter 7 of Part 10.2.

27 (h) (1) The California Film Commission shall annually provide
28 the Legislative Analyst's Office, the Franchise Tax Board, and the
29 board with a list of qualified taxpayers and the tax credit amounts
30 allocated to each qualified taxpayer by the California Film
31 Commission. The list shall include the names and taxpayer
32 identification numbers, including taxpayer identification numbers
33 of each partner or shareholder, as applicable, of the qualified
34 taxpayer.

35 (2) (A) Notwithstanding paragraph (6) of subdivision (g), the
36 California Film Commission shall annually post on its Internet
37 Web site and make available for public release the following:

38 (i) A table which includes all of the following information: a
39 list of qualified taxpayers and the tax credit amounts allocated to
40 each qualified taxpayer by the California Film Commission, the

1 number of production days in California the qualified taxpayer
2 represented in its application would occur, the number of California
3 jobs that the qualified taxpayer represented in its application would
4 be directly created by the production, and the total amount of
5 qualified expenditures expected to be spent by the production.

6 (ii) A narrative staff summary describing the production of the
7 qualified taxpayer as well as background information regarding
8 the qualified taxpayer contained in the qualified taxpayer's
9 application for the credit.

10 (B) Nothing in this subdivision shall be construed to make the
11 information submitted by an applicant for a tax credit under this
12 section a public record.

13 (3) The California Film Commission shall provide each city
14 and county in California with an instructional guide that includes,
15 but is not limited to, a review of best practices for facilitating
16 motion picture production in local jurisdictions, resources on
17 hosting and encouraging motion picture production, and the
18 California Film Commissions' Model Film Ordinance. The
19 California Film Commission shall maintain on its Internet Web
20 site a list of initiatives by locality that encourage motion picture
21 production in regions across the state. The list shall be distributed
22 to each approved applicant for the program to highlight local
23 jurisdictions that offer incentives to facilitate film production.

24 (i) (1) The aggregate amount of credits that may be allocated
25 for any fiscal year pursuant to this section and Section 23695 shall
26 be an amount equal to the sum of all of the following:

27 (A) ~~Three hundred million dollars (\$300,000,000)~~ *Two hundred*
28 *million dollars (\$200,000,000)* in credits for the 2015–16 fiscal
29 year.

30 (B) Four hundred million dollars (\$400,000,000) in credits for
31 the 2016–17 fiscal year and each fiscal year thereafter, through
32 and including the 2018–19 fiscal year.

33 (C) The unused allocation credit amount, if any, for the
34 preceding fiscal year.

35 (D) The amount of previously allocated credits not certified.

36 (E) The amount of any credits reduced pursuant to paragraph
37 (2) of subdivision (d).

38 (2) (A) Notwithstanding the foregoing, the California Film
39 Commission shall allocate the credit amounts subject to the
40 following categories:

1 (i) Independent films shall be allocated 5 percent of the amount
2 specified in paragraph (1).

3 (ii) Features shall be allocated 35 percent of the amount specified
4 in paragraph (1).

5 ~~(iii) Subject to clause (vi) of subparagraph (D) of paragraph (2)~~
6 ~~of subdivision (g), a~~ A relocating television series shall be allocated
7 20 percent of the amount specified in paragraph (1).

8 ~~(iv) Subject to clause (vi) of subparagraph (D) of paragraph~~
9 ~~(2) of subdivision (g), a~~ A new television series, pilots for a new
10 television series, movies of the week, miniseries, and recurring
11 television series shall be allocated 40 percent of the amount
12 specified in paragraph (1).

13 (B) (i) Within 60 days after the allocation period, any unused
14 amount within a category or categories shall be apportioned to
15 another category or categories with a higher demand.

16 (ii) *Notwithstanding the foregoing, at the end of the fiscal year,*
17 *any unused amount within the allocation described in clause (iii)*
18 *of subparagraph (A) shall be reallocated to the allocation*
19 *described in clause (iv) of subparagraph (A).*

20 (C) Notwithstanding the foregoing, the California Film
21 Commission may increase or decrease an allocation amount in
22 subparagraph (A) by 5 percent, if necessary, due to the jobs ratio,
23 the number of applications, or the allocation credit amounts
24 available by category compared to demand.

25 (D) *With respect to a relocating television series issued a credit*
26 *in a subsequent year pursuant to clause (v) of subparagraph (D)*
27 *of paragraph (2) of subdivision (g), that subsequent credit amount*
28 *shall be paid from the allocation amount described in clause (iv)*
29 *of subparagraph (A).*

30 (3) Any act that reduces the amount that may be allocated
31 pursuant to paragraph (1) constitutes a change in state taxes for
32 the purpose of increasing revenues within the meaning of Section
33 3 of Article XIII A of the California Constitution and may be
34 passed by not less than two-thirds of all Members elected to each
35 of the two houses of the Legislature.

36 (j) The California Film Commission shall have the authority to
37 allocate tax credits in accordance with this section and in
38 accordance with any regulations prescribed pursuant to subdivision
39 (e) upon adoption.

1 ~~SEC. 6.~~

2 *SEC. 7.* Section 23036 of the Revenue and Taxation Code is
3 amended to read:

4 23036. (a) (1) The term “tax” includes any of the following:

5 (A) The tax imposed under Chapter 2 (commencing with Section
6 23101).

7 (B) The tax imposed under Chapter 3 (commencing with Section
8 23501).

9 (C) The tax on unrelated business taxable income, imposed
10 under Section 23731.

11 (D) The tax on “S” corporations imposed under Section 23802.

12 (2) The term “tax” does not include any amount imposed under
13 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
14 of subdivision (f) of Section 24667.

15 (b) For purposes of Article 5 (commencing with Section 18661)
16 of Chapter 2, Article 3 (commencing with Section 19031) of
17 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
18 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
19 and for purposes of Sections 18601, 19001, and 19005, the term
20 “tax” also includes all of the following:

21 (1) The tax on limited partnerships, imposed under Section
22 17935, the tax on limited liability companies, imposed under
23 Section 17941, and the tax on registered limited liability
24 partnerships and foreign limited liability partnerships imposed
25 under Section 17948.

26 (2) The alternative minimum tax imposed under Chapter 2.5
27 (commencing with Section 23400).

28 (3) The tax on built-in gains of “S” corporations, imposed under
29 Section 23809.

30 (4) The tax on excess passive investment income of “S”
31 corporations, imposed under Section 23811.

32 (c) Notwithstanding any other provision of this part, credits are
33 allowed against the “tax” in the following order:

34 (1) Credits that do not contain carryover provisions.

35 (2) Credits that, when the credit exceeds the “tax,” allow the
36 excess to be carried over to offset the “tax” in succeeding taxable
37 years, except for those credits that are allowed to reduce the “tax”
38 below the tentative minimum tax, as defined by Section 23455.
39 The order of credits within this paragraph shall be determined by
40 the Franchise Tax Board.

1 (3) The minimum tax credit allowed by Section 23453.

2 (4) Credits that are allowed to reduce the “tax” below the
3 tentative minimum tax, as defined by Section 23455.

4 (5) Credits for taxes withheld under Section 18662.

5 (d) Notwithstanding any other provision of this part, each of
6 the following applies:

7 (1) A credit may not reduce the “tax” below the tentative
8 minimum tax (as defined by paragraph (1) of subdivision (a) of
9 Section 23455), except the following credits:

10 (A) The credit allowed by former Section 23601 (relating to
11 solar energy).

12 (B) The credit allowed by former Section 23601.4 (relating to
13 solar energy).

14 (C) The credit allowed by former Section 23601.5 (relating to
15 solar energy).

16 (D) The credit allowed by Section 23609 (relating to research
17 expenditures).

18 (E) The credit allowed by former Section 23609.5 (relating to
19 clinical testing expenses).

20 (F) The credit allowed by Section 23610.5 (relating to
21 low-income housing).

22 (G) The credit allowed by former Section 23612 (relating to
23 sales and use tax credit).

24 (H) The credit allowed by Section 23612.2 (relating to enterprise
25 zone sales or use tax credit).

26 (I) The credit allowed by former Section 23612.6 (relating to
27 Los Angeles Revitalization Zone sales tax credit).

28 (J) The credit allowed by former Section 23622 (relating to
29 enterprise zone hiring credit).

30 (K) The credit allowed by Section 23622.7 (relating to enterprise
31 zone hiring credit).

32 (L) The credit allowed by former Section 23623 (relating to
33 program area hiring credit).

34 (M) The credit allowed by former Section 23623.5 (relating to
35 Los Angeles Revitalization Zone hiring credit).

36 (N) The credit allowed by former Section 23625 (relating to
37 Los Angeles Revitalization Zone hiring credit).

38 (O) The credit allowed by Section 23633 (relating to targeted
39 tax area sales or use tax credit).

1 (P) The credit allowed by Section 23634 (relating to targeted
2 tax area hiring credit).

3 (Q) The credit allowed by former Section 23649 (relating to
4 qualified property).

5 (R) For taxable years beginning on or after January 1, 2011, the
6 credit allowed by Section 23685 (relating to qualified motion
7 pictures).

8 (S) For taxable years beginning on or after January 1, 2016, the
9 credit allowed by Section 23695 (relating to qualified motion
10 pictures).

11 (2) A credit against the tax may not reduce the minimum
12 franchise tax imposed under Chapter 2 (commencing with Section
13 23101).

14 (e) Any credit which is partially or totally denied under
15 subdivision (d) is allowed to be carried over to reduce the “tax”
16 in the following year, and succeeding years if necessary, if the
17 provisions relating to that credit include a provision to allow a
18 carryover of the unused portion of that credit.

19 (f) Unless otherwise provided, any remaining carryover from a
20 credit that has been repealed or made inoperative is allowed to be
21 carried over under the provisions of that section as it read
22 immediately prior to being repealed or becoming inoperative.

23 (g) Unless otherwise provided, if two or more taxpayers share
24 in costs that would be eligible for a tax credit allowed under this
25 part, each taxpayer is eligible to receive the tax credit in proportion
26 to his or her respective share of the costs paid or incurred.

27 (h) Unless otherwise provided, in the case of an “S” corporation,
28 any credit allowed by this part is computed at the “S” corporation
29 level, and any limitation on the expenses qualifying for the credit
30 or limitation upon the amount of the credit applies to the “S”
31 corporation and to each shareholder.

32 (i) (1) With respect to any taxpayer that directly or indirectly
33 owns an interest in a business entity that is disregarded for tax
34 purposes pursuant to Section 23038 and any regulations thereunder,
35 the amount of any credit or credit carryforward allowable for any
36 taxable year attributable to the disregarded business entity is limited
37 in accordance with paragraphs (2) and (3).

38 (2) The amount of any credit otherwise allowed under this part,
39 including any credit carryover from prior years, that may be applied
40 to reduce the taxpayer’s “tax,” as defined in subdivision (a), for

the taxable year is limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. A credit is not allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).

(j) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-thru entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.

(2) For purposes of this subdivision, "eligible pass-thru entity" means any partnership or "S" corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year a credit is operative.

(3) This subdivision applies to credits that become inoperative on or after the operative date of the act adding this subdivision.

SEC. 7.5. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

1 (D) The tax on ~~S~~ “S” corporations imposed under Section
2 23802.

3 (2) The term “tax” does not include any amount imposed under
4 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
5 of subdivision (f) of Section 24667.

6 (b) For purposes of Article 5 (commencing with Section 18661)
7 of Chapter 2, Article 3 (commencing with Section 19031) of
8 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
9 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
10 and for purposes of Sections 18601, 19001, and 19005, the term
11 “tax” also includes all of the following:

12 (1) The tax on limited partnerships, imposed under Section
13 17935, the tax on limited liability companies, imposed under
14 Section 17941, and the tax on registered limited liability
15 partnerships and foreign limited liability partnerships imposed
16 under Section 17948.

17 (2) The alternative minimum tax imposed under Chapter 2.5
18 (commencing with Section 23400).

19 (3) The tax on built-in gains of ~~S~~ “S” corporations, imposed
20 under Section 23809.

21 (4) The tax on excess passive investment income of S
22 corporations, imposed under Section 23811.

23 (c) Notwithstanding any other provision of this part, credits are
24 allowed against the “tax” in the following order:

25 (1) Credits that do not contain carryover provisions.

26 (2) Credits that, when the credit exceeds the “tax,” allow the
27 excess to be carried over to offset the “tax” in succeeding taxable
28 years, except for those credits that are allowed to reduce the “tax”
29 below the tentative minimum tax, as defined by Section 23455.
30 The order of credits within this paragraph shall be determined by
31 the Franchise Tax Board.

32 (3) The minimum tax credit allowed by Section 23453.

33 (4) Credits that are allowed to reduce the “tax” below the
34 tentative minimum tax, as defined by Section 23455.

35 (5) Credits for taxes withheld under Section 18662.

36 (d) Notwithstanding any other provision of this part, each of
37 the following applies:

38 (1) A credit may not reduce the “tax” below the tentative
39 minimum tax (as defined by paragraph (1) of subdivision (a) of
40 Section 23455), except the following credits:

1 (A) The credit allowed by former Section 23601 (relating to
2 solar energy).

3 (B) The credit allowed by former Section 23601.4 (relating to
4 solar energy).

5 (C) The credit allowed by former Section 23601.5 (relating to
6 solar energy).

7 (D) The credit allowed by Section 23609 (relating to research
8 expenditures).

9 (E) The credit allowed by former Section 23609.5 (relating to
10 clinical testing expenses).

11 (F) The credit allowed by Section 23610.5 (relating to
12 low-income housing).

13 (G) The credit allowed by former Section 23612 (relating to
14 sales and use tax credit).

15 (H) The credit allowed by Section 23612.2 (relating to enterprise
16 zone sales or use tax credit).

17 (I) The credit allowed by former Section 23612.6 (relating to
18 Los Angeles Revitalization Zone sales tax credit).

19 (J) The credit allowed by former Section 23622 (relating to
20 enterprise zone hiring credit).

21 (K) The credit allowed by Section 23622.7 (relating to enterprise
22 zone hiring credit).

23 (L) The credit allowed by former Section 23623 (relating to
24 program area hiring credit).

25 (M) The credit allowed by former Section 23623.5 (relating to
26 Los Angeles Revitalization Zone hiring credit).

27 (N) The credit allowed by former Section 23625 (relating to
28 Los Angeles Revitalization Zone hiring credit).

29 (O) The credit allowed by Section 23633 (relating to targeted
30 tax area sales or use tax credit).

31 (P) The credit allowed by Section 23634 (relating to targeted
32 tax area hiring credit).

33 (Q) The credit allowed by former Section 23649 (relating to
34 qualified property).

35 (R) For taxable years beginning on or after January 1, 2011, the
36 credit allowed by Section 23685 (relating to qualified motion
37 pictures).

38 (S) *For taxable years beginning on or after January 1, 2014,*
39 *the credit allowed by Section 23689 (relating to GO-Biz California*
40 *Competes Credit).*

1 (T) For taxable years beginning on or after January 1, 2016,
2 the credit allowed by Section 23695 (relating to qualified motion
3 pictures).

4 (2) A credit against the tax may not reduce the minimum
5 franchise tax imposed under Chapter 2 (commencing with Section
6 23101).

7 (e) Any credit which is partially or totally denied under
8 subdivision (d) is allowed to be carried over to reduce the “tax”
9 in the following year, and succeeding years if necessary, if the
10 provisions relating to that credit include a provision to allow a
11 carryover of the unused portion of that credit.

12 (f) Unless otherwise provided, any remaining carryover from a
13 credit that has been repealed or made inoperative is allowed to be
14 carried over under the provisions of that section as it read
15 immediately prior to being repealed or becoming inoperative.

16 (g) Unless otherwise provided, if two or more taxpayers share
17 in costs that would be eligible for a tax credit allowed under this
18 part, each taxpayer is eligible to receive the tax credit in proportion
19 to his or her respective share of the costs paid or incurred.

20 (h) Unless otherwise provided, in the case of an ~~S~~ “S”
21 corporation, any credit allowed by this part is computed at the ~~S~~
22 “S” corporation level, and any limitation on the expenses
23 qualifying for the credit or limitation upon the amount of the credit
24 applies to the ~~S~~ “S” corporation and to each shareholder.

25 (i) (1) With respect to any taxpayer that directly or indirectly
26 owns an interest in a business entity that is disregarded for tax
27 purposes pursuant to Section 23038 and any regulations thereunder,
28 the amount of any credit or credit carryforward allowable for any
29 taxable year attributable to the disregarded business entity is limited
30 in accordance with paragraphs (2) and (3).

31 (2) The amount of any credit otherwise allowed under this part,
32 including any credit carryover from prior years, that may be applied
33 to reduce the taxpayer’s “tax,” as defined in subdivision (a), for
34 the taxable year is limited to an amount equal to the excess of the
35 taxpayer’s regular tax (as defined in Section 23455), determined
36 by including income attributable to the disregarded business entity
37 that generated the credit or credit carryover, over the taxpayer’s
38 regular tax (as defined in Section 23455), determined by excluding
39 the income attributable to that disregarded business entity. A credit
40 is not allowed if the taxpayer’s regular tax (as defined in Section

1 23455), determined by including the income attributable to the
2 disregarded business entity is less than the taxpayer's regular tax
3 (as defined in Section 23455), determined by excluding the income
4 attributable to the disregarded business entity.

5 (3) If the amount of a credit allowed pursuant to the section
6 establishing the credit exceeds the amount allowable under this
7 subdivision in any taxable year, the excess amount may be carried
8 over to subsequent taxable years pursuant to subdivisions (d), (e),
9 and (f).

10 (j) (1) Unless otherwise specifically provided, in the case of a
11 taxpayer that is a partner or shareholder of an eligible pass-thru
12 entity described in paragraph (2), any credit passed through to the
13 taxpayer in the taxpayer's first taxable year beginning on or after
14 the date the credit is no longer operative may be claimed by the
15 taxpayer in that taxable year, notwithstanding the repeal of the
16 statute authorizing the credit prior to the close of that taxable year.

17 (2) For purposes of this subdivision, "eligible pass-thru entity"
18 means any partnership or ~~S~~ "S" corporation that files its return on
19 a fiscal year basis pursuant to Section 18566, and that is entitled
20 to a credit pursuant to this part for the taxable year that begins
21 during the last year a credit is operative.

22 (3) This subdivision applies to credits that become inoperative
23 on or after the operative date of the act adding this subdivision.

24 *SEC. 8. Section 23685 of the Revenue and Taxation Code is*
25 *amended to read:*

26 23685. (a) (1) For taxable years beginning on or after January
27 1, 2011, there shall be allowed to a qualified taxpayer a credit
28 against the "tax," as defined in Section 23036, in an amount equal
29 to the applicable percentage, as specified in paragraph (4), of the
30 qualified expenditures for the production of a qualified motion
31 picture in California.

32 (2) The credit shall be allowed for the taxable year in which the
33 California Film Commission issues the credit certificate pursuant
34 to subdivision (g) for the qualified motion picture, and shall be for
35 the applicable percentage of all qualified expenditures paid or
36 incurred by the qualified taxpayer in all taxable years for that
37 qualified motion picture.

38 (3) The amount of the credit allowed to a qualified taxpayer
39 shall be limited to the amount specified in the credit certificate

1 issued to the qualified taxpayer by the California Film Commission
2 pursuant to subdivision (g).

3 (4) For purposes of paragraphs (1) and (2), the applicable
4 percentage shall be:

5 (A) Twenty percent of the qualified expenditures attributable
6 to the production of a qualified motion picture in California.

7 (B) Twenty-five percent of the qualified expenditures
8 attributable to the production of a qualified motion picture in
9 California where the qualified motion picture is a television series
10 that relocated to California or an independent film.

11 (b) For purposes of this section:

12 (1) “Ancillary product” means any article for sale to the public
13 that contains a portion of, or any element of, the qualified motion
14 picture.

15 (2) “Budget” means an estimate of all expenses paid or incurred
16 during the production period of a qualified motion picture. It shall
17 be the same budget used by the qualified taxpayer and production
18 company for all qualified motion picture purposes.

19 (3) “Clip use” means a use of any portion of a motion picture,
20 other than the qualified motion picture, used in the qualified motion
21 picture.

22 (4) “Credit certificate” means the certificate issued by the
23 California Film Commission pursuant to subparagraph (C) of
24 paragraph (2) of subdivision (g).

25 (5) (A) “Employee fringe benefits” means the amount allowable
26 as a deduction under this part to the qualified taxpayer involved
27 in the production of the qualified motion picture, exclusive of any
28 amounts contributed by employees, for any year during the
29 production period with respect to any of the following:

30 (i) Employer contributions under any pension, profit-sharing,
31 annuity, or similar plan.

32 (ii) Employer-provided coverage under any accident or health
33 plan for employees.

34 (iii) The employer’s cost of life or disability insurance provided
35 to employees.

36 (B) Any amount treated as wages under clause (i) of
37 subparagraph (A) of paragraph (18) shall not be taken into account
38 under this paragraph.

39 (6) “Independent film” means a motion picture with a minimum
40 budget of one million dollars (\$1,000,000) and a maximum budget

1 of ten million dollars (\$10,000,000) that is produced by a company
2 that is not publicly traded and publicly traded companies do not
3 own, directly or indirectly, more than 25 percent of the producing
4 company.

5 (7) "Licensing" means any grant of rights to distribute the
6 qualified motion picture, in whole or in part.

7 (8) "New use" means any use of a motion picture in a medium
8 other than the medium for which it was initially created.

9 (9) (A) "Postproduction" means the final activities in a qualified
10 motion picture's production, including editing, foley recording,
11 automatic dialogue replacement, sound editing, scoring and music
12 editing, beginning and end credits, negative cutting, negative
13 processing and duplication, the addition of sound and visual effects,
14 soundmixing, film-to-tape transfers, encoding, and color correction.

15 (B) "Postproduction" does not include the manufacture or
16 shipping of release prints.

17 (10) "Preproduction" means the process of preparation for actual
18 physical production which begins after a qualified motion picture
19 has received a firm agreement of financial commitment, or is
20 greenlit, with, for example, the establishment of a dedicated
21 production office, the hiring of key crew members, and includes,
22 but is not limited to, activities that include location scouting and
23 execution of contracts with vendors of equipment and stage space.

24 (11) "Principal photography" means the phase of production
25 during which the motion picture is actually shot, as distinguished
26 from preproduction and postproduction.

27 (12) "Production period" means the period beginning with
28 preproduction and ending upon completion of postproduction.

29 (13) "Qualified entity" means a personal service corporation as
30 defined in Section 269A(b)(1) of the Internal Revenue Code, a
31 payroll services corporation, or any entity receiving qualified wages
32 with respect to services performed by a qualified individual.

33 (14) (A) "Qualified individual" means any individual who
34 performs services during the production period in an activity related
35 to the production of a qualified motion picture.

36 (B) "Qualified individual" shall not include either of the
37 following:

38 (i) Any individual related to the qualified taxpayer as described
39 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
40 Revenue Code.

1 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
2 the Internal Revenue Code, of the qualified taxpayer.

3 (15) (A) “Qualified motion picture” means a motion picture
4 that is produced for distribution to the general public, regardless
5 of medium, that is one of the following:

6 (i) A feature with a minimum production budget of one million
7 dollars (\$1,000,000) and a maximum production budget of
8 seventy-five million dollars (\$75,000,000).

9 (ii) A movie of the week or miniseries with a minimum
10 production budget of five hundred thousand dollars (\$500,000).

11 (iii) A new television series produced in California with a
12 minimum production budget of one million dollars (\$1,000,000)
13 licensed for original distribution on basic cable.

14 (iv) An independent film.

15 (v) A television series that relocated to California.

16 (B) To qualify as a “qualified motion picture,” all of the
17 following conditions shall be satisfied:

18 (i) At least 75 percent of the production days occur wholly in
19 California or 75 percent of the production budget is incurred for
20 payment for services performed within the state and the purchase
21 or rental of property used within the state.

22 (ii) Production of the qualified motion picture is completed
23 within 30 months from the date on which the qualified taxpayer’s
24 application is approved by the California Film Commission. For
25 purposes of this section, a qualified motion picture is “completed”
26 when the process of postproduction has been finished.

27 (iii) The copyright for the motion picture is registered with the
28 United States Copyright Office pursuant to Title 17 of the United
29 States Code.

30 (iv) Principal photography of the qualified motion picture
31 commences after the date on which the application is approved by
32 the California Film Commission, but no later than 180 days after
33 the date of that approval.

34 (C) For the purposes of subparagraph (A), in computing the
35 total wages paid or incurred for the production of a qualified
36 motion picture, all amounts paid or incurred by all persons or
37 entities that share in the costs of the qualified motion picture shall
38 be aggregated.

39 (D) “Qualified motion picture” shall not include commercial
40 advertising, music videos, a motion picture produced for private

1 noncommercial use, such as weddings, graduations, or as part of
 2 an educational course and made by students, a news program,
 3 current events or public events program, talk show, game show,
 4 sporting event or activity, awards show, telethon or other
 5 production that solicits funds, reality television program, clip-based
 6 programming if more than 50 percent of the content is comprised
 7 of licensed footage, documentaries, variety programs, daytime
 8 dramas, strip shows, one-half hour (air time) episodic television
 9 shows, or any production that falls within the recordkeeping
 10 requirements of Section 2257 of Title 18 of the United States Code.

11 (16) “Qualified expenditures” means amounts paid or incurred
 12 to purchase or lease tangible personal property used within this
 13 state in the production of a qualified motion picture and payments,
 14 including qualified wages, for services performed within this state
 15 in the production of a qualified motion picture.

16 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
 17 or incurred qualified expenditures and has been issued a credit
 18 certificate by the California Film Commission pursuant to
 19 subdivision (g).

20 (B) (i) In the case of any pass-thru entity, the determination of
 21 whether a taxpayer is a qualified taxpayer under this section shall
 22 be made at the entity level and any credit under this section is not
 23 allowed to the pass-thru entity, but shall be passed through to the
 24 partners or shareholders in accordance with applicable provisions
 25 of Part 10 (commencing with Section 17001) or Part 11
 26 (commencing with Section 23001). For purposes of this paragraph,
 27 “pass-thru entity” means any entity taxed as a partnership or “S”
 28 corporation.

29 (ii) In the case of an “S” corporation, the credit allowed under
 30 this section shall not be used by an “S” corporation as a credit
 31 against a tax imposed under Chapter 4.5 (commencing with Section
 32 23800) of Part 11 of Division 2.

33 (18) (A) “Qualified wages” means all of the following:

34 (i) Any wages subject to withholding under Division 6
 35 (commencing with Section 13000) of the Unemployment Insurance
 36 Code that were paid or incurred by any taxpayer involved in the
 37 production of a qualified motion picture with respect to a qualified
 38 individual for services performed on the qualified motion picture
 39 production within this state.

(ii) The portion of any employee fringe benefits paid or incurred by any taxpayer involved in the production of the qualified motion picture that are properly allocable to qualified wage amounts described in clause (i).

(iii) Any payments made to a qualified entity for services performed in this state by qualified individuals within the meaning of paragraph (14).

(iv) Remuneration paid to an independent contractor who is a qualified individual for services performed within this state by that qualified individual.

(B) “Qualified wages” shall not include any of the following:

(i) Expenses, including wages, related to new use, reuse, clip use, licensing, secondary markets, or residual compensation, or the creation of any ancillary product, including, but not limited to, a soundtrack album, toy, game, trailer, or teaser.

(ii) Expenses, including wages, paid or incurred with respect to acquisition, development, turnaround, or any rights thereto.

(iii) Expenses, including wages, related to financing, overhead, marketing, promotion, or distribution of a qualified motion picture.

(iv) Expenses, including wages, paid per person per qualified motion picture for writers, directors, music directors, music composers, music supervisors, producers, and performers, other than background actors with no scripted lines.

(19) “Residual compensation” means supplemental compensation paid at the time that a motion picture is exhibited through new use, reuse, clip use, or in secondary markets, as distinguished from payments made during production.

(20) “Reuse” means any use of a qualified motion picture in the same medium for which it was created, following the initial use in that medium.

(21) “Secondary markets” means media in which a qualified motion picture is exhibited following the initial media in which it is exhibited.

(22) “Television series that relocated to California” means a television series, without regard to episode length or initial media exhibition, that filmed all of its prior season or seasons outside of California and for which the taxpayer certifies that the credit provided pursuant to this section is the primary reason for relocating to California.

1 (c) (1) Notwithstanding subdivision (i) of Section 23036, in
2 the case where the credit allowed by this section exceeds the
3 taxpayer's tax liability computed under this part, a qualified
4 taxpayer may elect to assign any portion of the credit allowed
5 under this section to one or more affiliated corporations for each
6 taxable year in which the credit is allowed. For purposes of this
7 subdivision, "affiliated corporation" has the meaning provided in
8 subdivision (b) of Section 25110, as that section was amended by
9 Chapter 881 of the Statutes of 1993, as of the last day of the taxable
10 year in which the credit is allowed, except that "100 percent" is
11 substituted for "more than 50 percent" wherever it appears in the
12 section, and "voting common stock" is substituted for "voting
13 stock" wherever it appears in the section.

14 (2) The election provided in paragraph (1):

15 (A) May be based on any method selected by the qualified
16 taxpayer that originally receives the credit.

17 (B) Shall be irrevocable for the taxable year the credit is allowed,
18 once made.

19 (C) May be changed for any subsequent taxable year if the
20 election to make the assignment is expressly shown on each of the
21 returns of the qualified taxpayer and the qualified taxpayer's
22 affiliated corporations that assign and receive the credits.

23 (D) Shall be reported to the Franchise Tax Board, in the form
24 and manner specified by the Franchise Tax Board, along with all
25 required information regarding the assignment of the credit,
26 including the corporation number, the federal employer
27 identification number, or other taxpayer identification number of
28 the assignee, and the amount of the credit assigned.

29 (3) (A) Notwithstanding any other law, a qualified taxpayer
30 may sell any credit allowed under this section that is attributable
31 to an independent film, as defined in paragraph (6) of subdivision
32 (b), to an unrelated party.

33 (B) The qualified taxpayer shall report to the Franchise Tax
34 Board prior to the sale of the credit, in the form and manner
35 specified by the Franchise Tax Board, all required information
36 regarding the purchase and sale of the credit, including the social
37 security or other taxpayer identification number of the unrelated
38 party to whom the credit has been sold, the face amount of the
39 credit sold, and the amount of consideration received by the
40 qualified taxpayer for the sale of the credit.

(4) In the case where the credit allowed under this section exceeds the “tax,” the excess credit may be carried over to reduce the “tax” in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.

(5) A credit shall not be sold pursuant to this subdivision to more than one taxpayer, nor may the credit be resold by the unrelated party to another taxpayer or other party.

(6) A party that has been assigned or acquired tax credits under this paragraph shall be subject to the requirements of this section.

(7) In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed by this section is claimed on any tax return of the qualified taxpayer.

(8) In the event that both the taxpayer originally allocated a credit under this section by the California Film Commission and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the Franchise Tax Board may disallow the credit of either taxpayer, so long as the statute of limitations upon assessment remains open.

(9) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this subdivision.

(10) Subdivision (i) of Section 23036 shall not apply to any credit sold pursuant to this subdivision.

(11) For purposes of this subdivision:

(A) An affiliated corporation or corporations that are assigned a credit pursuant to paragraph (1) shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(B) The unrelated party or parties that purchase a credit pursuant to paragraph (3) shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(d) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:

(1) Identification of each qualified individual.

(2) The specific start and end dates of production.

(3) The total wages paid.

(4) The amount of qualified wages paid to each qualified individual.

1 (5) The copyright registration number, as reflected on the
2 certificate of registration issued under the authority of Section 410
3 of Title 17 of the United States Code, relating to registration of
4 claim and issuance of certificate. The registration number shall be
5 provided on the return claiming the credit.

6 (6) The total amounts paid or incurred to purchase or lease
7 tangible personal property used in the production of a qualified
8 motion picture.

9 (7) Information to substantiate its qualified expenditures.

10 (8) Information required by the California Film Commission
11 under regulations promulgated pursuant to subdivision (g)
12 necessary to verify the amount of credit claimed.

13 (e) The California Film Commission may prescribe rules and
14 regulations to carry out the purposes of this section including any
15 rules and regulations necessary to establish procedures, processes,
16 requirements, and rules identified in or required to implement this
17 section. The regulations shall include provisions to set aside a
18 percentage of annual credit allocations for independent films.

19 (f) If the qualified taxpayer fails to provide the copyright
20 registration number as required in paragraph (5) of subdivision
21 (d), the credit shall be disallowed and assessed and collected under
22 Section 19051 until the procedures are satisfied.

23 (g) For purposes of this section, the California Film Commission
24 shall do the following:

25 (1) On or after July 1, 2009, and before July 1, 2017, allocate
26 tax credits to applicants.

27 (A) Establish a procedure for applicants to file with the
28 California Film Commission a written application, on a form jointly
29 prescribed by the California Film Commission and the Franchise
30 Tax Board for the allocation of the tax credit. The application shall
31 include, but not be limited to, the following information:

32 (i) The budget for the motion picture production.

33 (ii) The number of production days.

34 (iii) A financing plan for the production.

35 (iv) The diversity of the workforce employed by the applicant,
36 including, but not limited to, the ethnic and racial makeup of the
37 individuals employed by the applicant during the production of
38 the qualified motion picture, to the extent possible.

39 (v) All members of a combined reporting group, if known at
40 the time of the application.

(vi) Financial information, if available, including, but not limited to, the most recently produced balance sheets, annual statements of profits and losses, audited or unaudited financial statements, summary budget projections or results, or the functional equivalent of these documents of a partnership or owner of a single member limited liability company that is disregarded pursuant to Section 23038. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.

(vii) The names of all partners in a partnership not publicly traded or the names of all members of a limited liability company classified as a partnership not publicly traded for California income tax purposes that have a financial interest in the applicant's qualified motion picture. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.

(viii) Detailed narratives, for use only by the Legislative Analyst's Office in conducting a study of the effectiveness of this credit, that describe the extent to which the credit is expected to influence or affect filming and other business location decisions, hiring decisions, salary decisions, and any other financial matters of the applicant.

(ix) Any other information deemed relevant by the California Film Commission or the Franchise Tax Board.

(B) Establish criteria, consistent with the requirements of this section, for allocating tax credits.

(C) Determine and designate applicants who meet the requirements of this section.

(D) Process and approve, or reject, all applications on a first-come-first-served basis.

(E) Subject to the annual cap established as provided in subdivision (i), allocate an aggregate amount of credits under this section and Section 17053.85, and allocate any carryover of unallocated credits from prior years.

(2) Certify tax credits allocated to qualified taxpayers.

(A) Establish a verification procedure for the amount of qualified expenditures paid or incurred by the applicant, including, but not limited to, updates to the information in subparagraph (A) of paragraph (1) of subdivision (g).

1 (B) Establish audit requirements that must be satisfied before
2 a credit certificate may be issued by the California Film
3 Commission.

4 (C) (i) Establish a procedure for a qualified taxpayer to report
5 to the California Film Commission, prior to the issuance of a credit
6 certificate, the following information:

7 (I) If readily available, a list of the states, provinces, or other
8 jurisdictions in which any member of the applicant's combined
9 reporting group in the same business unit as the qualified taxpayer
10 that, in the preceding calendar year, has produced a qualified
11 motion picture intended for release in the United States market.
12 For purposes of this clause, "qualified motion picture" shall not
13 include any episodes of a television series that were complete or
14 in production prior to July 1, 2009.

15 (II) Whether a qualified motion picture described in subclause
16 (I) was awarded any financial incentive by the state, province, or
17 other jurisdiction that was predicated on the performance of
18 primary principal photography or postproduction in that location.

19 (ii) The California Film Commission may provide that the report
20 required by this subparagraph be filed in a single report provided
21 on a calendar year basis for those qualified taxpayers that receive
22 multiple credit certificates in a calendar year.

23 (D) Issue a credit certificate to a qualified taxpayer upon
24 completion of the qualified motion picture reflecting the credit
25 amount allocated after qualified expenditures have been verified
26 under this section. The amount of credit shown in the credit
27 certificate shall not exceed the amount of credit allocated to that
28 qualified taxpayer pursuant to this section.

29 (3) Obtain, when possible, the following information from
30 applicants that do not receive an allocation of credit:

31 (A) Whether the qualified motion picture that was the subject
32 of the application was completed.

33 (B) If completed, in which state or foreign jurisdiction was the
34 primary principal photography completed.

35 (C) Whether the applicant received any financial incentives
36 from the state or foreign jurisdiction to make the qualified motion
37 picture in that location.

38 (4) Provide the Legislative Analyst's Office, upon request, any
39 or all application materials or any other materials received from,
40 or submitted by, the applicants, in electronic format when available,

1 including, but not limited to, information provided pursuant to
2 clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

3 (5) The information provided to the California Film Commission
4 pursuant to this section shall constitute confidential tax information
5 for purposes of Article 2 (commencing with Section 19542) of
6 Chapter 7 of Part 10.2.

7 (h) (1) The California Film Commission shall annually provide
8 the Legislative Analyst's Office, the Franchise Tax Board, and the
9 board with a list of qualified taxpayers and the tax credit amounts
10 allocated to each qualified taxpayer by the California Film
11 Commission. The list shall include the names and taxpayer
12 identification numbers, including taxpayer identification numbers
13 of each partner or shareholder, as applicable, of the qualified
14 taxpayer.

15 (2) (A) Notwithstanding paragraph (5) of subdivision (g), the
16 California Film Commission shall annually post on its Internet
17 Web site and make available for public release the following:

18 (i) A table which includes all of the following information: a
19 list of qualified taxpayers and the tax credit amounts allocated to
20 each qualified taxpayer by the California Film Commission, the
21 number of production days in California the qualified taxpayer
22 represented in its application would occur, the number of California
23 jobs that the qualified taxpayer represented in its application would
24 be directly created by the production, and the total amount of
25 qualified expenditures expected to be spent by the production.

26 (ii) A narrative staff summary describing the production of the
27 qualified taxpayer as well as background information regarding
28 the qualified taxpayer contained in the qualified taxpayer's
29 application for the credit.

30 (B) Nothing in this subdivision shall be construed to make the
31 information submitted by an applicant for a tax credit under this
32 section a public record.

33 (i) (1) The aggregate amount of credits that may be allocated
34 in any fiscal year pursuant to this section and Section 17053.85
35 shall be an amount equal to the sum of all of the following:

36 (A) One hundred million dollars (\$100,000,000) in credits for
37 the 2009–10 fiscal year and each fiscal year thereafter, through
38 and including the ~~2016–17~~ 2014–15 fiscal year.

39 (B) *In addition to the amounts specified in subparagraph (A),*
40 *one hundred million dollars (\$100,000,000) in the aggregate*

1 *amount of credits that may be allocated for the 2015–16 and*
2 *2016–17 fiscal years.*

3 ~~(B)~~

4 (C) The unused allocation credit amount, if any, for the
5 preceding fiscal year.

6 ~~(C)~~

7 (D) The amount of previously allocated credits not certified.

8 (2) If the amount of credits applied for in any particular fiscal
9 year exceeds the aggregate amount of tax credits authorized to be
10 allocated under this section, such excess shall be treated as having
11 been applied for on the first day of the subsequent fiscal year.
12 However, credits may not be allocated from a fiscal year other
13 than the fiscal year in which the credit was originally applied for
14 or the immediately succeeding fiscal year.

15 (3) Notwithstanding the foregoing, the California Film
16 Commission shall set aside up to ten million dollars (\$10,000,000)
17 of tax credits each fiscal year for independent films allocated in
18 accordance with rules and regulations developed pursuant to
19 subdivision (e).

20 (4) Any act that reduces the amount that may be allocated
21 pursuant to paragraph (1) constitutes a change in state taxes for
22 the purpose of increasing revenues within the meaning of Section
23 3 of Article XIII A of the California Constitution and may be passed
24 by not less than two-thirds of all Members elected to each of the
25 two houses of the Legislature.

26 (j) The California Film Commission shall have the authority to
27 allocate tax credits in accordance with this section and in
28 accordance with any regulations prescribed pursuant to subdivision
29 (e) upon adoption.

30 ~~SEC. 7.~~

31 *SEC. 9.* Section 23695 is added to the Revenue and Taxation
32 Code, to read:

33 23695. (a) (1) For taxable years beginning on or after January
34 1, 2016, there shall be allowed to a qualified taxpayer a credit
35 against the “tax,” as defined in Section 23036, subject to a
36 computation and ranking by the California Film Commission in
37 subdivision (g) and the allocation amount categories described in
38 subdivision (i), in an amount ~~not to exceed equal to 20 percent or~~
39 ~~25 percent, whichever is the applicable credit percentage, as~~
40 ~~specified described~~ in paragraph (4), of the qualified expenditures

1 for the production of a qualified motion picture in California. A
2 credit shall not be allowed under this section for any qualified
3 expenditures for the production of a motion picture in California
4 if a credit has been claimed for those same expenditures under
5 Section 23685.

6 (2) The credit shall be allowed for the taxable year in which the
7 California Film Commission issues the credit certificate pursuant
8 to subdivision (g) for the qualified motion picture, but in no
9 instance prior to July 1, 2016, and shall be for the applicable
10 percentage of all qualified expenditures paid or incurred by the
11 qualified taxpayer in all taxable years for that qualified motion
12 picture.

13 (3) The amount of the credit allowed to a qualified taxpayer
14 shall be limited to the amount specified in the credit certificate
15 issued to the qualified taxpayer by the California Film Commission
16 pursuant to subdivision (g).

17 (4) For purposes of paragraphs (1) and (2), the applicable credit
18 percentage shall be:

19 (A) Twenty percent of the qualified expenditures attributable
20 to the production of a qualified motion picture in California,
21 including, but not limited to, a feature, up to one hundred million
22 dollars (\$100,000,000) in qualified expenditures, or a television
23 series that relocated to California that is in its second or subsequent
24 years of receiving a tax credit allocation pursuant to this section
25 or Section 23685.

26 (B) Twenty-five percent of the qualified expenditures
27 attributable to the production of a qualified motion picture in
28 California where the qualified motion picture is a television series
29 that relocated to California in its first year of receiving a tax credit
30 allocation pursuant to this section.

31 (C) Twenty-five percent of the qualified expenditures, up to ten
32 million dollars (\$10,000,000), attributable to the production of a
33 qualified motion picture that is an independent film.

34 (D) (i) In order to carry out ~~clause (vii) of subparagraph (D) of~~
35 ~~paragraph (2) of subdivision (g), subparagraph (D) of paragraph~~
36 ~~(2) of subdivision (d)~~, the California Film Commission shall
37 increase the applicable credit percentage by 5 percent, not to exceed
38 a maximum of 25 percent of qualified expenditures relating to
39 original photography outside the Los Angeles zone.

40 (ii) For purposes of this subparagraph:

1 (I) “Applicable period” means the period that commences with
2 preproduction and ends when original photography concludes. The
3 applicable period includes the time necessary to strike a remote
4 location and return to the Los Angeles zone.

5 (II) “Los Angeles zone” means the area within a circle 30 miles
6 in radius from Beverly Boulevard and La Cienega Boulevard, Los
7 Angeles, California, and includes Agua Dulce, Castaic, including
8 Lake Castaic, Leo Carillo State Beach, Ontario International
9 Airport, Piru, and Pomona, including the Los Angeles County
10 Fairgrounds. The Metro Goldwyn Mayer, Inc. Conejo Ranch
11 property is within the Los Angeles zone.

12 (III) “Original photography” includes principal photography
13 and reshooting original footage.

14 (IV) “Qualified expenditures relating to original photography
15 outside the Los Angeles zone” means amounts paid or incurred
16 during the applicable period for tangible personal property
17 purchased or leased and used or consumed outside the Los Angeles
18 zone and relating to original photography outside the Los Angeles
19 zone and qualified wages paid for services performed outside the
20 Los Angeles zone and relating to original photography outside the
21 Los Angeles zone.

22 (E) Twenty-five percent of the qualified expenditures relating
23 to music scoring and music track recording by musicians
24 attributable to the production of a qualified motion picture in
25 California.

26 (F) Twenty-five percent of the qualified expenditures relating
27 to qualified visual effects attributable to the production of a
28 qualified motion picture in California.

29 (b) For purposes of this section:

30 (1) “Ancillary product” means any article for sale to the public
31 that contains a portion of, or any element of, the qualified motion
32 picture.

33 (2) “Budget” means an estimate of all expenses paid or incurred
34 during the production period of a qualified motion picture. It shall
35 be the same budget used by the qualified taxpayer and production
36 company for all qualified motion picture purposes.

37 (3) “Clip use” means a use of any portion of a motion picture,
38 other than the qualified motion picture, used in the qualified motion
39 picture.

1 (4) “Credit certificate” means the certificate issued by the
2 California Film Commission pursuant to subparagraph (C) of
3 paragraph (3) of subdivision (g).

4 (5) (A) “Employee fringe benefits” means the amount allowable
5 as a deduction under this part to the qualified taxpayer involved
6 in the production of the qualified motion picture, exclusive of any
7 amounts contributed by employees, for any year during the
8 production period with respect to any of the following:

9 (i) Employer contributions under any pension, profit-sharing,
10 annuity, or similar plan.

11 (ii) Employer-provided coverage under any accident or health
12 plan for employees.

13 (iii) The employer’s cost of life or disability insurance provided
14 to employees.

15 (B) Any amount treated as wages under clause (i) of
16 subparagraph (A) of paragraph (21) shall not be taken into account
17 under this paragraph.

18 (6) “Independent film” means a motion picture with a minimum
19 budget of one million dollars (\$1,000,000) that is produced by a
20 company that is not publicly traded and publicly traded companies
21 do not own, directly or indirectly, more than 25 percent of the
22 producing company.

23 (7) “Jobs ratio” means the amount of qualified wages paid to
24 qualified individuals divided by the amount of tax credit, as
25 computed by the California Film Commission.

26 (8) “Licensing” means any grant of rights to distribute the
27 qualified motion picture, in whole or in part.

28 (9) “New use” means any use of a motion picture in a medium
29 other than the medium for which it was initially created.

30 (10) “Pilot for a new television series” means the initial episode
31 produced for a proposed television series.

32 (11) (A) “Postproduction” means the final activities in a
33 qualified motion picture’s production, including editing, foley
34 recording, automatic dialogue replacement, sound editing, scoring,
35 music track recording by musicians and music editing, beginning
36 and end credits, negative cutting, negative processing and
37 duplication, the addition of sound and visual effects, sound mixing,
38 film-to-tape transfers, encoding, and color correction.

39 (B) “Postproduction” does not include the manufacture or
40 shipping of release prints or their equivalent.

1 (12) “Preproduction” means the process of preparation for actual
2 physical production which begins after a qualified motion picture
3 has received a firm agreement of financial commitment, or is
4 greenlit, with, for example, the establishment of a dedicated
5 production office, the hiring of key crew members, and includes,
6 but is not limited to, activities that include location scouting and
7 execution of contracts with vendors of equipment and stage space.

8 (13) “Principal photography” means the phase of production
9 during which the motion picture is actually shot, as distinguished
10 from preproduction and postproduction.

11 (14) “Production period” means the period beginning with
12 preproduction and ending upon completion of postproduction.

13 (15) “Qualified entity” means a personal service corporation as
14 defined in Section 269A(b)(1) of the Internal Revenue Code, a
15 payroll services corporation, or any entity receiving qualified wages
16 with respect to services performed by a qualified individual.

17 (16) “Qualified expenditures” means amounts paid or incurred
18 for tangible personal property purchased or leased, and used, within
19 this state in the production of a qualified motion picture and
20 payments, including qualified wages, for services performed within
21 this state in the production of a qualified motion picture.

22 (17) (A) “Qualified individual” means any individual who
23 performs services during the production period in an activity related
24 to the production of a qualified motion picture.

25 (B) “Qualified individual” shall not include either of the
26 following:

27 (i) Any individual related to the qualified taxpayer as described
28 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
29 Revenue Code.

30 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
31 the Internal Revenue Code, of the qualified taxpayer.

32 (18) (A) “Qualified motion picture” means a motion picture
33 that is produced for distribution to the general public, regardless
34 of medium, that is one of the following:

35 (i) A feature with a minimum production budget of one million
36 dollars (\$1,000,000).

37 (ii) A movie of the week or miniseries with a minimum
38 production budget of five hundred thousand dollars (\$500,000).

39 (iii) A new television series of episodes longer than 40 minutes
40 each of running time, exclusive of commercials, that is produced

1 in California, with a minimum production budget of one million
2 dollars (\$1,000,000) per episode.

3 (iv) An independent film.

4 (v) A television series that relocated to California.

5 (vi) A pilot for a new television series that is longer than 40
6 minutes of running time, exclusive of commercials, that is produced
7 in California, and with a minimum production budget of one
8 million dollars (\$1,000,000).

9 (B) To qualify as a “qualified motion picture,” all of the
10 following conditions shall be satisfied:

11 (i) At least 75 percent of the principal photography days occur
12 wholly in California or 75 percent of the production budget is
13 incurred for payment for services performed within the state and
14 the purchase or rental of property used within the state.

15 (ii) Production of the qualified motion picture is completed
16 within 30 months from the date on which the qualified taxpayer’s
17 application is approved by the California Film Commission. For
18 purposes of this section, a qualified motion picture is “completed”
19 when the process of postproduction has been finished.

20 (iii) The copyright for the motion picture is registered with the
21 United States Copyright Office pursuant to Title 17 of the United
22 States Code.

23 (iv) Principal photography of the qualified motion picture
24 commences after the date on which the application is approved by
25 the California Film Commission, but no later than 180 days after
26 the date of that approval unless death, disability, or disfigurement
27 of the director or of a principal cast member, an act of God,
28 including, but not limited to, fire, flood, earthquake, storm,
29 hurricane, or other natural disaster, terrorist activities, or
30 government sanction has directly prevented a production’s ability
31 to begin principal photography within the prescribed 180-day
32 commencement period.

33 (C) For the purposes of subparagraph (A), in computing the
34 total wages paid or incurred for the production of a qualified
35 motion picture, all amounts paid or incurred by all persons or
36 entities that share in the costs of the qualified motion picture shall
37 be aggregated.

38 (D) “Qualified motion picture” shall not include commercial
39 advertising, music videos, a motion picture produced for private
40 noncommercial use, such as weddings, graduations, or as part of

1 an educational course and made by students, a news program,
2 current events or public events program, talk show, game show,
3 sporting event or activity, awards show, telethon or other
4 production that solicits funds, reality television program, clip-based
5 programming if more than 50 percent of the content is comprised
6 of licensed footage, documentaries, variety programs, daytime
7 dramas, strip shows, one-half hour (air time) episodic television
8 shows, or any production that falls within the recordkeeping
9 requirements of Section 2257 of Title 18 of the United States Code.

10 (19) (A) “Qualified taxpayer” means a taxpayer who has paid
11 or incurred qualified expenditures, participated in the Career
12 Readiness requirement, and has been issued a credit certificate by
13 the California Film Commission pursuant to subdivision (g).

14 (B) (i) In the case of any pass-thru entity, the determination of
15 whether a taxpayer is a qualified taxpayer under this section shall
16 be made at the entity level and any credit under this section is not
17 allowed to the pass-thru entity, but shall be passed through to the
18 partners or shareholders in accordance with applicable provisions
19 of Part 10 (commencing with Section 17001) or Part 11
20 (commencing with Section 23001). For purposes of this paragraph,
21 “pass-thru entity” means any entity taxed as a partnership or “S”
22 corporation.

23 (ii) In the case of an “S” corporation, the credit allowed under
24 this section shall not be used by an “S” corporation as a credit
25 against a tax imposed under Chapter 4.5 (commencing with Section
26 23800) of Part 11 of Division 2.

27 (20) “Qualified visual effects” means visual effects where at
28 least 75 percent or a minimum of ten million dollars (\$10,000,000)
29 of the qualified expenditures for the visual effects is paid or
30 incurred in California.

31 (21) (A) “Qualified wages” means all of the following:

32 (i) Any wages subject to withholding under Division 6
33 (commencing with Section 13000) of the Unemployment Insurance
34 Code that were paid or incurred by any taxpayer involved in the
35 production of a qualified motion picture with respect to a qualified
36 individual for services performed on the qualified motion picture
37 production within this state.

38 (ii) The portion of any employee fringe benefits paid or incurred
39 by any taxpayer involved in the production of the qualified motion

1 picture that are properly allocable to qualified wage amounts
2 described in clauses (i), (iii), and (iv).

3 (iii) Any payments made to a qualified entity for services
4 performed in this state by qualified individuals within the meaning
5 of paragraph (17).

6 (iv) Remuneration paid to an independent contractor who is a
7 qualified individual for services performed within this state by that
8 qualified individual.

9 (B) “Qualified wages” shall not include any of the following:

10 (i) Expenses, including wages, related to new use, reuse, clip
11 use, licensing, secondary markets, or residual compensation, or
12 the creation of any ancillary product, including, but not limited to,
13 a soundtrack album, toy, game, trailer, or teaser.

14 (ii) Expenses, including wages, paid or incurred with respect to
15 acquisition, development, turnaround, or any rights thereto.

16 (iii) Expenses, including wages, related to financing, overhead,
17 marketing, promotion, or distribution of a qualified motion picture.

18 (iv) Expenses, including wages, paid per person per qualified
19 motion picture for writers, directors, music directors, music
20 composers, music supervisors, producers, and performers, other
21 than background actors with no scripted lines.

22 (22) “Residual compensation” means supplemental
23 compensation paid at the time that a motion picture is exhibited
24 through new use, reuse, clip use, or in secondary markets, as
25 distinguished from payments made during production.

26 (23) “Reuse” means any use of a qualified motion picture in the
27 same medium for which it was created, following the initial use
28 in that medium.

29 (24) “Secondary markets” means media in which a qualified
30 motion picture is exhibited following the initial media in which it
31 is exhibited.

32 (25) “Television series that relocated to California” means a
33 television series, without regard to episode length or initial media
34 exhibition, with a minimum production budget of one million
35 dollars (\$1,000,000) per episode, that filmed no fewer than its most
36 recent two seasons outside of California or has filmed all seasons
37 outside of California and for which the taxpayer certifies that the
38 credit provided pursuant to this section is the primary reason for
39 relocating to California.

1 (26) “Visual effects” means the creation, alteration, or
2 enhancement of images that cannot be captured on a set or location
3 during live action photography and therefore is accomplished in
4 postproduction. It includes, but is not limited to, matte paintings,
5 animation, set extensions, computer-generated objects, characters
6 and environments, compositing (combining two or more elements
7 in a final image), and wire removals. “Visual effects” does not
8 include fully animated projects, whether created by traditional or
9 digital means.

10 (c) (1) Notwithstanding subdivision (i) of Section 23036, in
11 the case where the credit allowed by this section exceeds the
12 taxpayer’s tax liability computed under this part, a qualified
13 taxpayer may elect to assign any portion of the credit allowed
14 under this section to one or more affiliated corporations for each
15 taxable year in which the credit is allowed. For purposes of this
16 subdivision, “affiliated corporation” has the meaning provided in
17 subdivision (b) of Section 25110, as that section was amended by
18 Chapter 881 of the Statutes of 1993, as of the last day of the taxable
19 year in which the credit is allowed, except that “100 percent” is
20 substituted for “more than 50 percent” wherever it appears in the
21 section, and “voting common stock” is substituted for “voting
22 stock” wherever it appears in the section.

23 (2) The election provided in paragraph (1):

24 (A) May be based on any method selected by the qualified
25 taxpayer that originally receives the credit.

26 (B) Shall be irrevocable for the taxable year the credit is allowed,
27 once made.

28 (C) May be changed for any subsequent taxable year if the
29 election to make the assignment is expressly shown on each of the
30 returns of the qualified taxpayer and the qualified taxpayer’s
31 affiliated corporations that assign and receive the credits.

32 (D) Shall be reported to the Franchise Tax Board, in the form
33 and manner specified by the Franchise Tax Board, along with all
34 required information regarding the assignment of the credit,
35 including the corporation number, the federal employer
36 identification number, or other taxpayer identification number of
37 the assignee, and the amount of the credit assigned.

38 (3) (A) Notwithstanding any other law, a qualified taxpayer
39 may sell any credit allowed under this section that is attributable

1 to an independent film, as defined in paragraph (6) of subdivision
2 (b), to an unrelated party.

3 (B) The qualified taxpayer shall report to the Franchise Tax
4 Board prior to the sale of the credit, in the form and manner
5 specified by the Franchise Tax Board, all required information
6 regarding the purchase and sale of the credit, including the social
7 security or other taxpayer identification number of the unrelated
8 party to whom the credit has been sold, the face amount of the
9 credit sold, and the amount of consideration received by the
10 qualified taxpayer for the sale of the credit.

11 (4) In the case where the credit allowed under this section
12 exceeds the “tax,” the excess credit may be carried over to reduce
13 the “tax” in the following taxable year, and succeeding five taxable
14 years, if necessary, until the credit has been exhausted.

15 (5) A credit shall not be sold pursuant to this subdivision to
16 more than one taxpayer, nor may the credit be resold by the
17 unrelated party to another taxpayer or other party.

18 (6) A party that has been assigned or acquired tax credits under
19 this subdivision shall be subject to the requirements of this section.

20 (7) In no event may a qualified taxpayer assign or sell any tax
21 credit to the extent the tax credit allowed by this section is claimed
22 on any tax return of the qualified taxpayer.

23 (8) In the event that both the taxpayer originally allocated a
24 credit under this section by the California Film Commission and
25 a taxpayer to whom the credit has been sold both claim the same
26 amount of credit on their tax returns, the Franchise Tax Board may
27 disallow the credit of either taxpayer, so long as the statute of
28 limitations upon assessment remains open.

29 (9) Chapter 3.5 (commencing with Section 11340) of Part 1 of
30 Division 3 of Title 2 of the Government Code does not apply to
31 any standard, criterion, procedure, determination, rule, notice, or
32 guideline established or issued by the Franchise Tax Board
33 pursuant to this subdivision.

34 (10) Subdivision (i) of Section 23036 shall not apply to any
35 credit sold pursuant to this subdivision.

36 (11) For purposes of this subdivision:

37 (A) An affiliated corporation or corporations that are assigned
38 a credit pursuant to paragraph (1) shall be treated as a qualified
39 taxpayer pursuant to paragraph (1) of subdivision (a).

1 (B) The unrelated party or parties that purchase a credit pursuant
2 to paragraphs (3) to (10), inclusive, shall be treated as a qualified
3 taxpayer pursuant to paragraph (1) of subdivision (a).

4 (d) (1) No credit shall be allowed pursuant to this section unless
5 the qualified taxpayer provides the following to the California
6 Film Commission:

7 (A) Identification of each qualified individual.

8 (B) The specific start and end dates of production.

9 (C) The total wages paid.

10 (D) The total amount of qualified wages paid to qualified
11 individuals.

12 (E) The copyright registration number, as reflected on the
13 certificate of registration issued under the authority of Section 410
14 of Title 17 of the United States Code, relating to registration of
15 claim and issuance of certificate. The registration number shall be
16 provided on the return claiming the credit.

17 (F) The total amounts paid or incurred to purchase or lease
18 tangible personal property used in the production of a qualified
19 motion picture.

20 (G) Information to substantiate its qualified expenditures.

21 (H) Information required by the California Film Commission
22 under regulations promulgated pursuant to subdivision (g)
23 necessary to verify the amount of credit claimed.

24 (I) Provides documentation ~~certifying~~ *verifying* completion of
25 the Career Readiness requirement.

26 (2) (A) Based on the information provided in paragraph (1),
27 the California Film Commission shall recompute the jobs ratio
28 previously computed in subdivision (g) and compare this
29 recomputed jobs ratio to the jobs ratio that the qualified taxpayer
30 previously listed on the application submitted pursuant to
31 subdivision (g). If the California Film Commission determines
32 that the jobs ratio has been reduced by more than 10 percent, the
33 California Film Commission shall reduce the amount of credit
34 allowed by an equal percentage, unless the qualified taxpayer
35 demonstrates, and the California Film Commission determines,
36 that reasonable cause exists for the ~~job~~ *jobs* ratio reduction.

37 (B) If the California Film Commission determines that the jobs
38 ratio has been reduced by more than 20 percent, the California
39 Film Commission shall not accept an application described in
40 subdivision (g) from that qualified taxpayer or any member of the

1 qualified taxpayer's controlled group for a period of not less than
2 one year from the date of that determination, unless the qualified
3 taxpayer demonstrates, and the California Film Commission
4 determines, that reasonable cause exists for the ~~job~~ jobs ratio
5 reduction.

6 *(C) If the California Film Commission determines that the jobs*
7 *ratio has been reduced by more than 20 percent for an independent*
8 *film, the tax credit allocation to the independent film shall be*
9 *revoked unless the qualified taxpayer demonstrates, and the*
10 *California Film Commission determines, that reasonable cause*
11 *exists for the jobs ratio reduction.*

12 *(D) Subject to subparagraph (D) of paragraph (4) of subdivision*
13 *(a), the California Film Commission shall increase the applicable*
14 *credit percentage by 5 percent, not to exceed a maximum of 25*
15 *percent, if the qualified motion picture paid or incurred outside*
16 *the Los Angeles zone the qualified expenditures relating to original*
17 *photography outside the Los Angeles zone.*

18 *(E) For the purposes of this paragraph, "reasonable cause"*
19 *means unforeseen circumstances beyond the control of the qualified*
20 *taxpayer, such as, but not limited to, the cancellation of a television*
21 *series prior to the completion of the scheduled number of episodes*
22 *or other similar circumstances as determined by the California*
23 *Film Commission in regulations to be adopted pursuant to*
24 *subdivision (e).*

25 (e) (1) (A) Subject to the Administrative Procedure Act
26 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
27 Division 3 of Title 2 of the Government Code), the California Film
28 Commission shall adopt rules and regulations to implement a
29 Career Readiness requirement by which the California Film
30 Commission shall identify training and public service opportunities
31 that may include, but not be limited to, hiring interns, public service
32 announcements, and community outreach and may prescribe rules
33 and regulations to carry out the purposes of this section, including,
34 ~~clauses (iv) and (v) subparagraph (E) of paragraph (2) of~~
35 ~~subdivision (d) and clause (iv) of subparagraph (D) of paragraph~~
36 ~~(2) of subdivision (g) and, (g), and~~ including any rules and
37 regulations necessary to establish procedures, processes,
38 requirements, application fee structure, and rules identified in or
39 required to implement this section, including credit and logo
40 requirements.

(B) Notwithstanding any other law, prior to preparing a notice of proposed action *pursuant to Section 11346.4 of the Government Code* and prior to making any revision to the proposed regulation other than a change that is nonsubstantial or solely grammatical in nature ~~pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code~~, the Governor's Office of Business and Economic Development shall first approve the proposed regulation or proposed change to a proposed regulation *regarding allocating the credit pursuant to subdivision (i), computing the jobs ratio as described in subdivisions (d) and (g), and defining "reasonable cause" pursuant to subparagraph (E) of paragraph (2) of subdivision (d).*

(2) (A) Implementation of this section for the 2015–16 fiscal year is deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare and, therefore, the California Film Commission is hereby authorized to adopt emergency regulations ~~only as necessary~~ to implement this section during the 2015–16 fiscal year in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(B) Nothing in this paragraph shall be construed to require the Governor's Office of Business and Economic Development to approve emergency regulations adopted pursuant to this paragraph.

(f) If the qualified taxpayer fails to provide the copyright registration number as required in subparagraph (E) of paragraph (1) of subdivision (d), the credit shall be disallowed and assessed and collected under Section 19051 until the procedures are satisfied.

(g) For purposes of this section, the California Film Commission shall do the following:

(1) Subject to the requirements of subparagraphs (A) through (E), inclusive, of paragraph (2), on or after January 1, 2015, and before July 1, 2016, in one or more allocation periods per fiscal year, allocate tax credits to applicants.

(2) On or after July 1, 2016, and before July 1, 2019, in two or more allocation periods per fiscal year, allocate tax credits to applicants.

1 (A) Establish a procedure for applicants to file with the
2 California Film Commission a written application, on a form jointly
3 prescribed by the California Film Commission and the Franchise
4 Tax Board for the allocation of the tax credit. The application shall
5 include, but not be limited to, the following information:

6 (i) The budget for the motion picture production.

7 (ii) The number of production days.

8 (iii) A financing plan for the production.

9 (iv) The diversity of the workforce employed by the applicant,
10 including, but not limited to, the ethnic and racial makeup of the
11 individuals employed by the applicant during the production of
12 the qualified motion picture, to the extent possible.

13 (v) All members of a combined reporting group, if known at
14 the time of the application.

15 (vi) Financial information, if available, including, but not limited
16 to, the most recently produced balance sheets, annual statements
17 of profits and losses, audited or unaudited financial statements,
18 summary budget projections or results, or the functional equivalent
19 of these documents of a partnership or owner of a single member
20 limited liability company that is disregarded pursuant to Section
21 23038. The information provided pursuant to this clause shall be
22 confidential and shall not be subject to public disclosure.

23 (vii) The names of all partners in a partnership not publicly
24 traded or the names of all members of a limited liability company
25 classified as a partnership not publicly traded for California income
26 tax purposes that have a financial interest in the applicant's
27 qualified motion picture. The information provided pursuant to
28 this clause shall be confidential and shall not be subject to public
29 disclosure.

30 (viii) The amount of qualified wages the applicant expects to
31 pay to qualified individuals. ~~The information provided pursuant~~
32 ~~to this clause shall be confidential and shall not be subject to public~~
33 ~~disclosure.~~

34 (ix) The amount of tax credit requested not to exceed the
35 applicable credit percentage described in paragraph (4) of
36 subdivision (a). ~~The information provided pursuant to this clause~~
37 ~~shall be confidential and shall not be subject to public disclosure.~~

38 (x) A statement establishing that the tax credit described in this
39 section is a significant factor in the applicant's choice of location
40 for the qualified motion picture. The statement shall include

1 information about whether the qualified motion picture is at risk
2 of not being filmed or specify the jurisdiction or jurisdictions in
3 which the qualified motion picture will be located in the absence
4 of the tax credit. The statement shall be signed by an officer or
5 executive of the applicant.

6 (xi) Any other information deemed relevant by the California
7 Film Commission or the Franchise Tax Board.

8 (B) Establish criteria, consistent with the requirements of this
9 section, for allocating tax credits.

10 (C) Determine and designate applicants who meet the
11 requirements of this section.

12 (D) (i) For purposes of allocating the credit amounts subject to
13 the categories described in subdivision (i) in any fiscal year, the
14 California Film Commission shall do all of the following:

15 (ii) For each allocation date and for each category, list each
16 applicant from highest to lowest according to the jobs ratio as
17 computed by the California Film Commission.

18 (iii) Subject to the applicable credit percentage, allocate the
19 credit to each applicant according to the highest jobs ratio, working
20 down the list, until the credit amount is exhausted.

21 ~~(iv) Pursuant to regulations adopted pursuant to subdivision (c),~~
22 ~~the California Film Commission may increase the jobs ratio up to~~
23 ~~10 percent for applications where 75 percent of the principal~~
24 ~~photography days occur wholly in the state and 75 percent of the~~
25 ~~production budget is incurred for payment for services performed~~
26 ~~within the state and the purchase or rental of property used within~~
27 ~~the state.~~

28 ~~(v) Pursuant to regulations adopted pursuant to subdivision (c),~~
29 ~~in addition to the jobs ratio increase authorized by clause (iv), the~~
30 ~~California Film Commission may additionally increase the jobs~~
31 ~~ratio up to 10 percent for applications that will use facilities in the~~
32 ~~state for at least 75 percent of the postproduction.~~

33 *(iv) Pursuant to regulations adopted pursuant to subdivision*
34 *(e), the California Film Commission may increase the jobs ratio*
35 *by up to 25 percent if a qualified motion picture increases*
36 *economic activity in California according to criteria developed*
37 *by the California Film Commission that would include, but not be*
38 *limited to, such factors as, the amount of the production and*
39 *postproduction spending in California, the utilization of production*

1 *facilities in California, and other criteria measuring economic*
2 *impact in California as determined by the Film Commission.*

3 ~~(vi)~~

4 (v) Notwithstanding any other provision, any new television
5 series, relocating television series, or any new television series
6 based on a pilot for a new television series ~~described in paragraph~~
7 ~~(9) of subdivision (b), where that pilot has been previously that~~
8 *has been* approved and issued a credit allocation by the California
9 Film Commission either under this ~~section or section~~, Section
10 17053.95, 17053.85, or 23685 shall be issued a credit for each
11 subsequent ~~year~~ *year*, in ~~an amount equal to the prior credit~~
12 ~~amount, for the life of that television series qualified motion picture~~
13 whenever credits are allocated within a fiscal year.

14 ~~(vii) Subject to subparagraph (D) of paragraph (4) of subdivision~~
15 ~~(a), the California Film Commission shall increase the applicable~~
16 ~~credit percentage by 5 percent, not to exceed a maximum of 25~~
17 ~~percent, if the qualified motion picture paid or incurred outside~~
18 ~~the Los Angeles zone the qualified expenditures relating to original~~
19 ~~photography outside the Los Angeles zone.~~

20 (E) Subject to the annual cap and the allocation credit amounts
21 based on categories described in subdivision (i), allocate an
22 aggregate amount of credits under this section and Section
23 17053.95, and allocate any carryover of unallocated credits from
24 prior years and the amount of any credits reduced pursuant to
25 paragraph (2) of subdivision (d).

26 (3) Certify tax credits allocated to qualified taxpayers.

27 (A) Establish a verification procedure for the amount of qualified
28 expenditures paid or incurred by the applicant, including, but not
29 limited to, updates to the information in subparagraph (A) of
30 paragraph (2) of subdivision (g).

31 (B) Establish audit requirements that must be satisfied before
32 a credit certificate may be issued by the California Film
33 Commission.

34 (C) (i) Establish a procedure for a qualified taxpayer to report
35 to the California Film Commission, prior to the issuance of a credit
36 certificate, the following information:

37 (I) If readily available, a list of the states, provinces, or other
38 jurisdictions in which any member of the applicant's combined
39 reporting group in the same business unit as the qualified taxpayer
40 that, in the preceding calendar year, has produced a qualified

1 motion picture intended for release in the United States market.
2 For purposes of this clause, “qualified motion picture” shall not
3 include any episodes of a television series that were complete or
4 in production prior to July 1, 2016.

5 (II) Whether a qualified motion picture described in subclause
6 (I) was awarded any financial incentive by the state, province, or
7 other jurisdiction that was predicated on the performance of
8 primary principal photography or postproduction in that location.

9 (ii) The California Film Commission may provide that the report
10 required by this subparagraph be filed in a single report provided
11 on a calendar year basis for those qualified taxpayers that receive
12 multiple credit certificates in a calendar year.

13 (D) Issue a credit certificate to a qualified taxpayer upon
14 completion of the qualified motion picture reflecting the credit
15 amount allocated after qualified expenditures have been verified
16 and the jobs ratio computed under this section. The amount of
17 credit shown in the credit certificate shall not exceed the amount
18 of credit allocated to that qualified taxpayer pursuant to this section.

19 (4) Obtain, when possible, the following information from
20 applicants that do not receive an allocation of credit:

21 (A) Whether the qualified motion picture that was the subject
22 of the application was completed.

23 (B) If completed, in which state or foreign jurisdiction was the
24 primary principal photography completed.

25 (C) Whether the applicant received any financial incentives
26 from the state or foreign jurisdiction to make the qualified motion
27 picture in that location.

28 (5) Provide the Legislative Analyst’s Office, upon request, any
29 or all application materials or any other materials received from,
30 or submitted by, the applicants, in electronic format when available,
31 including, but not limited to, information provided pursuant to
32 clauses (i) to (xi) inclusive, of subparagraph (A) of paragraph (2).

33 (6) The information provided to the California Film Commission
34 pursuant to this section shall constitute confidential tax information
35 for purposes of Article 2 (commencing with Section 19542) of
36 Chapter 7 of Part 10.2.

37 (h) (1) The California Film Commission shall annually provide
38 the Legislative Analyst’s Office, the Franchise Tax Board, and the
39 board with a list of qualified taxpayers and the tax credit amounts
40 allocated to each qualified taxpayer by the California Film

Commission. The list shall include the names and taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, of the qualified taxpayer.

(2) (A) Notwithstanding paragraph (6) of subdivision (g), the California Film Commission shall annually post on its Internet Web site and make available for public release the following:

(i) A table which includes all of the following information: a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission, the number of production days in California the qualified taxpayer represented in its application would occur, the number of California jobs that the qualified taxpayer represented in its application would be directly created by the production, and the total amount of qualified expenditures expected to be spent by the production.

(ii) A narrative staff summary describing the production of the qualified taxpayer as well as background information regarding the qualified taxpayer contained in the qualified taxpayer's application for the credit.

(B) Nothing in this subdivision shall be construed to make the information submitted by an applicant for a tax credit under this section a public record.

(3) The California Film Commission shall provide each city and county in California with an instructional guide that includes, but is not limited to, a review of best practices for facilitating motion picture production in local jurisdictions, resources on hosting and encouraging motion picture production, and the California Film Commissions' Model Film Ordinance. The California Film Commission shall maintain on its Internet Web site a list of initiatives by locality that encourage motion picture production in regions across the state. The list shall be distributed to each approved applicant for the program to highlight local jurisdictions that offer incentives to facilitate film production.

(i) (1) The aggregate amount of credits that may be allocated for any fiscal year pursuant to this section and Section 17053.95 shall be an amount equal to the sum of all of the following:

(A) ~~Three hundred million dollars (\$300,000,000)~~ *Two hundred million dollars (\$200,000,000)* in credits for the 2015–16 fiscal year.

1 (B) Four hundred million dollars (\$400,000,000) in credits for
2 the 2016–17 fiscal year and each fiscal year thereafter, through
3 and including the 2018–19 fiscal year.

4 (C) The unused allocation credit amount, if any, for the
5 preceding fiscal year.

6 (D) The amount of previously allocated credits not certified.

7 (E) The amount of any credits reduced pursuant to paragraph
8 (2) of subdivision (d).

9 (2) (A) Notwithstanding the foregoing, the California Film
10 Commission shall allocate the credit amounts subject to the
11 following categories:

12 (i) Independent films shall be allocated 5 percent of the amount
13 specified in paragraph (1).

14 (ii) Features shall be allocated 35 percent of the amount specified
15 in paragraph (1).

16 (iii) ~~Subject to clause (vi) of subparagraph (D) of paragraph~~
17 ~~(2) of subdivision (g), a~~ A relocating television series shall be
18 allocated 20 percent of the amount specified in paragraph (1).

19 (iv) ~~Subject to clause (vi) of subparagraph (D) of paragraph~~
20 ~~(2) of subdivision (g), a~~ A new television series, pilots for a new
21 television series, movies of the week, miniseries, and recurring
22 television series shall be allocated 40 percent of the amount
23 specified in paragraph (1).

24 (B) (i) Within 60 days after the allocation period, any unused
25 amount within a category or categories shall be apportioned to
26 another category or categories with a higher demand.

27 (ii) *Notwithstanding the foregoing, at the end of the fiscal year,*
28 *any unused amount within the allocation described in clause (iii)*
29 *of subparagraph (A) shall be reallocated to the allocation*
30 *described in clause (iv) of subparagraph (A).*

31 (C) Notwithstanding the foregoing, the California Film
32 Commission may increase or decrease an allocation amount in
33 subparagraph (A) by 5 percent, if necessary, due to the jobs ratio,
34 the number of applications, or the allocation credit amounts
35 available by category compared to demand.

36 (D) *With respect to a relocating television series issued a credit*
37 *in a subsequent year pursuant to clause (v) of subparagraph (D)*
38 *of paragraph (2) of subdivision (g), that subsequent credit amount*
39 *shall be paid from the allocation amount described in clause (iv)*
40 *of subparagraph (A).*

(3) Any act that reduces the amount that may be allocated pursuant to paragraph (1) constitutes a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution and may be passed by not less than two-thirds of all Members elected to each of the two houses of the Legislature.

(j) The California Film Commission shall have the authority to allocate tax credits in accordance with this section and in accordance with any regulations prescribed pursuant to subdivision (e) upon adoption.

~~SEC. 8.~~

SEC. 10. The Legislature finds and declares that Sections 5 and 7 of this act impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the California Film Commission to fully accomplish its goals, it is imperative to protect the interests of those persons submitting information to the California Film Commission to ensure that any personal or sensitive business information that this act requires those persons to submit is protected as confidential information.

~~SEC. 9.~~

SEC. 11. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. *Section 7.5 of this bill incorporates amendments to Section 23036 of the Revenue and Taxation Code proposed by both this bill and Assembly Bill 2754. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, but this bill becomes operative first, (2) each bill amends Section 23036 of the Revenue and Taxation Code, and (3) this bill is enacted after Assembly Bill 2754, in which case Section 23036 of the Revenue and Taxation Code, as amended by Section 7 of this bill, shall remain operative only until the operative*

1 *date of Assembly Bill 2754, at which time Section 7.5 of this bill*
2 *shall become operative.*

3 ~~SEC. 10.~~

4 *SEC. 13.* This act provides for a tax levy within the meaning
5 of Article IV of the Constitution and shall go into immediate effect.

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